John Bryden
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# The Ancient METHOD AND MANNER Of holding of PARLIAMENTS IN *ENGLAND.*

Being the COLLECTIONS OF *Henry Elsynge* Esq;

*LONDON* Printed by *S. G.* for *Daniel Pakeman*, and are to be sold at the Rainbow in *Fleetstreet* 1660.

MVSEVM
BRITAN
NICVM

# THE TABLE.

## CHAP. 1.
## Of SUMMONS.

HO *were anciently summoned to Parliament.* page 1.

*Whether the Summons were anciently by one general Writ or by particular Writs.* p. 2.

*The ancient Form of the Writ* p. 6.

*The difference between the ancient Writ of Summons and the Writ at this day* p. 9.

# The Table.

*Of the title of the party ſummoned* p. 10.
*The title of the Prince:* p. 10.
*The title of a Duke an Earl and a Baron.* p. 10.
*The titles to Barons and Peeers* p.11.
*The title* Baro *had* Dominus *in the Writ.* p. 12
*To the Judges.* p. 14.
*the Mandamus to the Biſhops* p. 15.
*The Mandamus to the temporal Lords.* p. 15.
*The next obſervation in the Writ of Summons is what they are commanded to do* p. 16.
*To the Biſhops* p. 16.
*To the temporal Lords* p 17.
*To the Judges an* eodem p 17.
*The Judges and others of the Kings Councel* p. 18.

per

# The Table.

*Per Clerum* p. 10
*Per Communitatem* p. 21
*By what warrant the Writs of Summons were made* p. 23
*The form of the Warrant* p. 25
*Earls that renewed their Charter* p. 28
*Barons by Writ* p. 30
*Of Peers.* p. 33
*Of Barons by tenure* p. 40
*To the great Councel* p. 51.
*Of omission of ſummoning of the Husband of an Heir female* p. 53
*The form of the ſeveral Writs of the ſummons of this day.* p. 54
*The form of the ancient writ for the election of the Knights, Citizens, and Burgeſſes* p. 56
*Addition to the ancient Writ of ſummons.* p. 59.

*Who are not to be chosen* p. 64
*Who are to be exempted (if they please from serving in the house of Commons* p 65

CHAP. 2.

Of *Appearance.*

*THe appearance of the first day of the Parliament* p 70
*The first days appearance* p. 71
*When the Lords are to appear in their Roabs.* p. 75

CHAP. 3.

*Locus & modus sedendi.*

*WHether the Lords and Commons did anciently sit in one Room together* p. 82
*Whether the Commons did anciently sit*

*ſit at conference with the Lords* p. 84
*Their manner of ſitting in Parliament at this day* p. 86.
*The Kings Seat.* p. 86
*The Princes place* p. 87
*The Kings Childrens place* p. ibid.
*The Kings vicegerent in Eccleſiaſtical juriſdiction his place* p. ibid.

CHAP. 4.

Of Parliament dayes.

*ON what days the Parliament may not ſit* p. 93.
*Chriſtmas day they are not to ſit.* p. 93.
*Convocation days they ſit not* p. 93
*Star Chamber days they ſit not* p. 95

## CHAP. 5. Of Proxies.

*THe making of Proxies prove the Lords right to be ſummoned* p. 96
*The ancient form of Proxies* p. 97
*In what caſes Proxies are to be made without licenſe* p. 98
*The Kings licenſe to be abſent and to make Proxies* p. 100
*The ancient form of the Kings licenſe to be abſent* p. 101
*The Kings licenſe of latter times* p. 102
*Unto whom Proxies may be made* p 104
*The form of the Kings licenſe to be abſent at this day* p 10[illegible]. The

*The form of the Proxie at this day*
p. 107

## CHAP. de ſummonitionis Cauſa.

*BY whom the cauſe of ſummons ought to be declared* p 109
*Upon what occaſions the cauſe of ſummons have been declared by the Lord chief Juſtice tempore E. 3. though the Chancelor were preſent*
p. 110
*Whether he that anciently declared the cauſe of ſummons, not being the Chancellor, was Speaker alſo all the Parliament though the Chancellor were preſent.* p. 114 & 115
*Whether he that anciently declared*
*the*

## CHAP. 5. Of Proxies.

*THe making of Proxies prove the Lords right to be ſummoned* p. 96
*The ancient form of Proxies* p. 97
*In what caſes Proxies are to be made without licenſe* p. 98
*The Kings licenſe to be abſent and to make Proxies* p. 100
*The ancient form of the Kings licenſe to be abſent* p. 101
*The Kings licenſe of latter times* p. 102
*Unto whom Proxies may be made* p 104
*The form of the Kings licenſe to be abſent at this day* p 105.

The

*The form of the Proxie at this day* p. 107

## CHAP. de ſummonitionis Cauſa.

*BY whom the cauſe of ſummons ought to be declared* p. 109
*Upon what occaſions the cauſe of ſummons have been declared by the Lord chief Juſtice tempore E. 3. though the Chancelor were preſent* p. 110
*Whether he that anciently declared the cauſe of ſummons, not being the Chancellor, was Speaker alſo all the Parliament though the Chancellor were preſent* p. 114 & 115
*Whether he that anciently declared the*

the cauſe of ſummons not being the Chancellor, had any commiſſion as now under the Seal or no p.117
The manner how the cauſe of ſummons is declared when the King is preſent in perſon, and how when his Majeſtie is repreſented by Commiſſion. p.119
The Commiſſion to ſupply the Lord Chancellors place. p 121

## CHAP. 7
### De Prolocutor Domus Communis.

THe Commons ever had a Speaker p. 123
The election of a Speaker p.126
The preſentment of a Speaker p 130
The Speakers excuſe p 131
The Speakers proteſtation p.133

His

His ſpeechancient at this day p. 135
That the Commons ever enjoyed thoſe priviledges which the Speaker now petitions for though never deſired by any of the ancient Speakers until after the 6 year of King H. 8. p. 135
The petitions are now three touching their priviledges p 138
1. For acceſs unto his Majeſty
2. Freedom of ſpeech
3. The third petition is for freedom from arreſts.
Concerning the committment of a Peer of this Realm in time of Parliament p. 151
Touching the impriſonment and reſtraint of Lords in the time of Parliament p 155

Pre-

# The Table.

*Precedents alleadged by Mr. Attorny general to prove that a Lord of Parliament may be committed in Parliament time for a personal offence done to the King though it be neither felony, treason, nor breach of peace* p. 160

*Answer to the Precedents alleadged by Mr. Attorny in the Earl of Arundel his case of the* 15 *of Elizabeth* p. 161

The *Earl of Hertfords* Case *An.* 5. Eliz. p. 162

The Case *of* Fisher *Bishop of* Rochester, *An.* 25. *of* H 8. p. 163

The *Duke of* Suffolks Case *An.* 28. H. 6. p. 166

The Case *of* Larke *An.* 8. H. 6. p. 171

The

The commitment of the Biſhop of Carlile in the Parliament time p. 173
The Earl of Northumberland An. 5 H. 4. p. 173
The Caſe of Stratford Arch-Biſhop of Canterbury. p. 174
The Caſe of the Biſhop of Winchester An. 3. E. 3 p. 176
The remonſtrance and petition of the Peers to the King touching the enlargment of the Earl of Arundel p178
How the parties arreſted have been ſet at liberty p194.
The opinion of the Judges in the Caſe of Thorp An. 31 H 6. p 196
In what Caſe a new Speaker hath been choſen p. 201

The

*The Commission for choice of a new Speaker,* p. 205

CHAP. 8.

Receivers and Tryers of Petitions.

*By whom Tryers and Receivers of petitions were appointed, and when,* p. 208

*Who were anciently appointed Receivers and Tryers of petitions.* p. 214

*Within what time the petitions were to be delivered.* p. 215

*What kinde of petitions they were.* p. 217

*How petitions were answered.* p. 218

*Per petitionem de consilio* p. 223

*Petitions endorsed* Coram Rege. p. 229

*Of Petitions endorsed,* Authoritate Parliamenti. p. 235

CHAP.

# CHAP. I.

## *Of* SUMMONS.

### *Who were anciently ſummoned to Parliament.*

ARchbiſhops, and Biſhops, *Ratione ſpecialis dignitatis et tenuræ.*

All Abbots and Priors which held by an Earldom or a Barony, *Ratione tenuræ.*

All Earls and Barons by reaſon of their Inheritable Nobility and tenure, and their Peers alſo, *ratione tenuræ.*

The Judges and Barons of the Exchequer, the Kings privy Councel, and his learned Councel were ſummoned alſo but *neque tenuræ, neque dignitatis ratione*, and they made no Proxies for they had no voice.

The Knights of the Shires.

The Barons of the Cinque Ports.

The Citizens and Burgeſſes were ever elected and ſent to the Parliament.

The Officers, as the Clerk of the Crown.

The Clerk of the Parliament, and the gentleman-Uſher attended *Ratione officii* without any ſummons.

Whether the Summons were anciently by one general Writ or particular Writs.

It appears in that Antient Manuſcript, *Modus tenendi Parliamentum.* That Arch-Biſhops, Abbots, and Pryors which held by *Baroniam, ſummoneri debent.*

*Minores Clerici nec minores laici non ſummoneri debent, ſed ſi eorum preſentia neceſſaria fuerat, Rex ſolebat talibus brevia ſua mittere, Rogand. quod Parliamentum ſuum intereſſent.*

Hence it may be gathered that in thoſe times *viz.* before the Conqueſt, the Lords ſpiritual and temporal, and the Peers were ſummoned to Parliament by one general Summons, and that the others who were neither Lords nor Peers had particular Writs, but it is unlikely that *William* the *Conqueror* did ſend out ſuch Summons to the Lords: For how could the antient Baronage (who were tranſlated by Conqueſt to the Normans) take notice thereof, their Lands, and Honors being ſeiſed for the King? It is probable he ſent particular Writs of Summons to his Normans (new created Lords) and to ſuch Engliſh (if any) as he continued

tinued in that degree of honour. *Vide Math. Paris.* page 247. in *Charta. R. his ſummoneri faciemus omnes Archiepiſc. Epiſc. &c.*

*Comites & Majores Barones, Regni noſtri ſingulatim per literas noſtras, &c.*

But as touching the Peers. Their Summons during his time continued as before, for it followes in the ſame Charter. *Et præterea faciemus ſummoneri in generali per vice-comites & ballivos noſtros omnes alios qui in Capite tenent, &c.*

By theſe tenants *in Capite* underſtand thoſe onely who held land *in capite* of the King (*Ad valentiam unius comitatus, vel Baroniæ integræ*, as it is in that antient Manuſcript *modus tenendi Parliamentum*) and they are there named Peers.

Divers learned Heralds not knowing any difference between the *Lords* and their Peers have run into theſe errors, *viz.*

**First**, that all heretofore came to Parliament who had Lands of an entire County or Barony, and that *Henry* the third, having ſmarted by ſuch a confuſed company of Barons did (after the battail of *Eveſham*) firſt ordain, that thoſe Earls and Barons to whom he directed his writs, ſhould only come to Parliament. for which they vouch no Record, but

only the first Writ of Summons extant, *Ann.* 49. *H.* 3. 14. *December*, and affirm the same to be after the battail of *Evesham*, and that this was the first time that Barons were called by special Writs.

**Secondly**, that the Writ of Summons did create a Baron.

**Thirdly**, the first Writ did ennoble the person so created, and if the Son was also summoned, then the blood was ennobled,

Not observing the difference between Peers and Barons, the one being admitted *ad libitum regis*, the other never if once created, being of full age, within the Land, and *Rectus in Curia*, as shall be declared hereafter in this Chapter.

**The** first of these is easily refuted and satisfied, for the practice appears to be otherwise touching the Earls and Barons in the time of King *John*, as by the aforesaid Charter in *Mathew Paris*.

**And** the very date of the Writs which are vouched proves, that the practise was also in *H.* 3. time, who began his Raign the *xixth.* of *October* and the Writs of Summons bear date in *December*, and the battail of *Evesham* 49. *H.* 3. happily this King did first ordain that no Peer should come to Parliament, unless such as had particular Writs of Summons,

and

and therefore the Heralds are to be excuſed, for the Peers once Summoned, have been reputed Lords of Parliament, and the Peers have been anciently ſtiled Barons, Vide Mr. *Selden* in his *Titles of Honour*: That *Mathew Paris* ſaith that *Hen.* 3. did number 250 of his Barons (who were as I conceive) *Barones minores* or Peers) and not thoſe who were Barons by Inheritance whom *Mathew Paris* in the other place ſtiles *Barones* Majores, for they never attained to that number: Alſo by this word (Peers) are underſtood all the Lords ſpiritual and temporal in the ſecond Parliament of 15. *E.* 2. & 1. *E.* 3. touching the baniſhment of the *Spencers*; ſo that the Heralds might eaſily be deceived therein, eſpecially ſince the Writs unto Barons and Peers, were all one, and they were ranked together promiſcuouſly in the Book of Summons, and ſome Peers placed there above ancient Barons.

**But** of this (*viz.*) that Peers were ſummoned, and omitted again (*ad libitum Regis*) And that Barons were ever created by Inveſtiture of Robes, and that the Writ only did create a Baron, and that the firſt Writ did enoble both the perſon and blood of him that was created more ſhall be ſaid hereafter in this Chapter in the title of Omiſſion.

Here

Here I will only remember that this word (*Baron*) was anciently a general name to all thoſe that held power of Iudicature) as well as to the Parliament Barons: the Freeholders in a Court Baron were anciently named Barons, and that Court ſtiled (*Curia Baronum* in reſpect of them, and not (*Curia Baronis*) as now in reſpect of the Lord of the Mannor; and the Aldermen of *London*, were anciently ſo named, and that they of the *Cinque ports*, retain it to this day, and ſo do the Barons of the Exchequer who were firſt called (*Sagi Barones*) for they were *ſagaces ad Compotos recipiendos & allocandos.*

§. 2.

## The *ancient form of the Writ.*

THE firſt writ of Summons extant upon Record is that of 49. *H.* 3. *viz.*

Henricus, *dei gratia, Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, venerabili in Chriſto patri. R. eâdem gratiâ* Epiſcopo Dunelm. *Salutem. cum poſt gravia turbationum diſcrimina dudum habita in Regno, Chariſſimus filius Edvardus primogenitus noſter, pro pace in regno noſtro aſſenſuranda, & firmanda, obſes traditus extitiſſet, & jam feduta (bene-*

*dictus*

*dictus deus*) *turbatione, prædicta ſuper deliberatione ejuſdem ſalubriter providenda, & plena ſecuritate, & tranquillitate pacis, ad honorem dei, & Utilitatem totius Regni noſtri firmanda, & totaliter complenda, ut ſuper quibuſdam aliis Regni noſtri negotiis, quæ ſine conſilio veſtro, & aliorum prælatorum & magnatum noſtrorum nolumus expediri, cum iiſdem tractatum habere nos oportet: vobis mandamus, Rogantes in fide & dilectione quibus nobis tenemini, quod omni occaſione poſt poſita & negotiis aliis pretermiſſis, Sitis ad nos London, in Octabis ſanct. Hillarii proxim. futur. nobiſcum, & cum prædictis prelatis, & magnatibus noſtris quos ibid. vocari fecimus ſuper premiſſis tractaturi. & concilium impenſur. & hoc ſicut nos et honorem noſtrum et veſtrum, nec non & communē Regni noſtri tranquilitatem diligitis, nullatenus omittatis: Teſte meipſo xiiii. Decemb. Ann. regni noſtri 49 eodem modo mandatum eſt* Epiſc. Carl. &c. *ſub data xiiii. Decemb.*

*In forma prædict. ſubſcribitur Abbot. & Prioribus ſubſcriptis, &c.*

*Subdata apud* Woodſtock *xiiii. Decemb.*

*In forma predict mandatum eſt comitibus et aliis ſubſcriptis dat apud* Woodſtock *viz*

Comi-

Comiti Leiceſter
Comiti Gloceſten.
Comiti Norf.
& Mareſchal. Angl:
Comiti Oxon.
Comiti Derby.
Rad. de Camois
Rogero de ſanct. Johanne
Hugo de Spencer. Juſtic. Angliæ.
Johani filii Johannis
Will. de Munches.
Nich. de Segrave
Johannni de Veſcye
Rad. Baſſet de Drayt.
Henrico de Haſtings
Galfrid. de Lucie
Roberto de Roes
Johanni de Eymil
Adæ de Novo Mercato
Waltero de Colvil
Gulielmo de Wyrmigey.
Rogero de Bertram
Roberto Baſſet de Sapcott.
Gilbert. de Gaunt.

Item

*Item Mandatum eſt ſingulis Comitibus r Anglaim quod venire faciant duos Milites legaliorib. & diſcretioribus militibus ſingrum Comitat. ad Regem, Lond. in Octabis radictis in forma pradicta.*

**Item** *in forma pradicta ſcribitur Civius Ebor. Civibus Lincoln. & Cæteris urgenſibus Angliæ, quod Mittant.*

*Item in forma pradicta Mandatum eſt Bonibus, et probis hominibus quinq; Portuum,* &c.

## *The difference between this Writ, and the Writ at this day.*

THis is ſpecial declaring the cauſe of the Summons, and ſo were divers others of *Edw.* the firſt, *Edw:* 2. *Ed.* 3. and *Rich.* 2. but for the moſt part they were generall as at this day, and none ſpeciall after the ſeventh year of *Rich.* 2. But Vide *Matthew Paris*, page 247. *in Charta Regis Johannis in omnibus litteris ſubmonitionis illius Experemus*, &c.

And alſo this Writ was alike unto the Lords and Judges (for ſuch were *Johannes de Eynil*) and they that followed; and ſo the Writs were all alike in divers yeares of *Edw.* 1. in moſt of *Edw.* 2. and in many of *Edw.* 3.

Of

## *Of the title of the party ſummoned.*

The Biſhops Chriſten-names were ever mentioned and ſtiled anciently *Venerabili in Chriſto Patri*, &c.

But of the latter times the Archbiſhops ſtiled *Reverendiſſimus*, and all others *Reverendi in Chriſto Patres.*

The Chriſtian names of the Abbots and Priors were never mentioned, they were ſtiled *Dilecto in Chriſto Abbati Sanct. Auguſtini*, &c.

## *The title of the Prince.*

I Find no other Attribute to the Prince then *Chariſſimus* in the time of *E.* 1. *E.* 2. and *E.* 3. and *H.* 4. And that is omitted in 24 *E.* 3. and in the 26 *E.* 3. It is thus, *Rex dilecto, & fideli Edwardo Principi Walliæ, Duci Cornubiæ, & Comiti Ceſtriæ, ſalutem.*

## *The Titles of a Duke, Earl, and Baron.*

Were ſtiled all alike, *Pront, dilecto, & fideli ſuo Henrico duci Lancaſt. ſalutē, Anno* 29 *E.* 3. Neither had any of the Kings brethren, Nephews, or Uncles, any other title

le in the time of *Edw.* 1. *Edw.* 2. and
d. 3.

But when *E.* 3. had created his own Chil-
en Dukes, and Earls, then they were ſtiled
*lii ſui Chariſsimi* : And *R.* 2. named
em *Avunculos*, or *Conſanguineos ſuos Cha-*
*ſsimos*, but no other had that Attribute of
*hariſsime* in the title of his Writ, although
e were the Kings kinſman, *prout Anno* 16
. 2. *dilecto & fideli Conſanguineo Ricar.*
*omit. Arundel*, & *Surrey*.

## *The Titles of Barons and Peers.*

THey never had any other title then *dilecto*
*& fideli*. After the French Wars ſome
of them had the addition of *Chivaler*: The
firſt ſo ſtiled was *William de Aldeburgh*, Ann.
49 *E.* 3. I remember no other in the time
of *E.* 3. but *Wells*, *eodem Anno* 49 *E.* 3.
in the Prorogation of that Parliament, and
he was ſummoned without that Addition:
*Anno* 50 *E.* 3. and after during his life.

And ſome 4. had that Addition, *Annis R.*
2. *H.*4. & *H.*5. but after 3 *H.*6. they all had
that title of *Chivaler*, but it was not anci-
ently a Note of honour, for in *Annis* 1, 2,
& 3 *R.* 2. ſome of the Judges had the ſame,
viz. *John Knevet*, and *Roger de Aſton*.

The

The title *Baron* had *Dominus* in th Writ.

The Lord *Stafford* and *Greyſtocke* were ſually ſummoned by the title of their Baron *prout Anno* 27 *E.* 1. *Edw. Baroni de Staf ford*, Anno 23 *E.* 1.

*Johanni Baroni de Greyſtocke*, omitting their Sirnames of *Bagot*, and I find others i the time of *H.* 6. who had the title of *Dom nus*, happily they were but then created which I leave to the ſearch of others, I wi onely recite their names.

*Edwardo de Grey, domino de Ferrariis d Groby*e *Henrico de Piercye, Carol. domino d* Poynings, *An.* 25 H. 6. 24 *Decemb.*

Johanni de Beauchamp, Militi, domino *Beauchamp*, *Jacobo Fiennes Militi domin de Saye, & de Sele*, Anno 27 H. 6. 20 *Januarij.*

*Roberto Hungerford Militi domino d Moleyns, Willielmo Bourchier Militi domin Fitzwaryn, Willielmo Beauchamp Domin de ſancto Amand. teſte R: apud* Weſtminſt. 17 *die Maij, Anno* 27 H. 6.

*R. dilecto, & fideli ſuo Henrico Bromfle Militi, Baroni de Veſſye ſalutem, quia*, &c. *Volumus enim vos, & hæred. veſtros Maſculos, de corpore veſtro legitime exeuntes Barones de Veſſey exiſtere. Teſte Rege apud* Weſtminſter

inſter 24 day of *Januarij*, *Anno* 27 Henry

*R. dilecto & fideli ſuo Willielmo Bonevill Militi domino de Clinton ſalutem quia*, &c. *cut in aliis brevibus* T.R. *apud* Weſtminſter *die* Martii, *Anno* 27 H. 6.

*Johanni Sturton Militi, domino Sturton*, *Anno* 28. H. 6.—— *per ipſum Regem.*

*Edwardo Nevil Militi, domino de Bergaveny, Thomæ domino de Roes, Thomæ Grey dom. de Ruthin, Thomæ Piercy Militi domino de Egremont, Willielmo Fines, Militi domino de Say, Anno* 29 H. 6. T. R. 23 *April.*

*Per ipſum Regem.*

*Johanni Domino de Clinton*, *Anno* 33 H. 6. 26 *Maij, Thomæ Stanley, Militi domino de Stanley* T. R. 15 die *Januarij per ipſum Regem & conſilium in Parliamento*, ſummoned to the Parliament of the 33 *H.* 6. and 34 H. 6.

*Richardo Fines domino de Dacre Militi*, *Ricard. Wells, domino Willoughby, Militi Johanni Clifford, domino de Clifford, Militi eodem Anno Johanni Nevill, domino de Nevil* T. R. *apud Coventry* 20 *Novemb. per litter. de privato Sigillo*, *Anno* 38 H. 6. 30 Julij, *per ipſum Regem.*

*Johanni*

*Johan. Nevil domino de Mountag. Chr.* &c. And in all theſe times the ſummons to the Lord *Griſtocke*, are *Rad. Greyſtock Chr.* omitting Barony, which he had in his ancient Writs.

And theſe Lords who in the time of *H.* 6. (Barons being then moſt uſually created by Patent) were ſtiled *Domini*, had their ſummons in *E.* 4. not the word *Chivaler* onely, ſince when they all have no other Addition.

## *To the Judges.*

THe Judges ever had the title of *Dilecti & fideles* in their Writs, and retain the ſame to this day.

Next to the title is conſiderable the form of the *Mandamus*, how it is to the Lords Spiritual, and how to the Lords Temporall, and the Judges, and others of the Kings learned Council.

And then (what the Lords and what the Judges) and others were commanded to do by their Writs or Summons.

*The*

*The Mandamus to the Biſhops.*

*Vobis Mandamus in fide & dilectione quibus nobis tenemini, quod*, &c. *Anno* 9 H. 3. *Vos effectuoſe requirimus, et Rogamus quod*, &c. *Anno* 27 E. 1.

*Vobis Mandamus quod*, &c. *Anno* 32 E. 1. 5 E. 3.

*Vobis Mandamus firmiter Injungentes quod*, &c. *Anno* 2 E. 2. *Anno* 1 E. 3. And all other Parliaments thus.

*Vobis Mandamus in fide et dilectione quibus nobis tenemini, firmiter Injungentes quod*, &c.

And ſo it continues unto this day, and the like to the Abbots and Priors.

The *Mandamus* to the Temporal Lords, *Anno* 49 E. 3.

After the Writ to the Biſhops which is entred at large, it followeth in the Roll.

*Item in forma prædicta Mandatum eſt Comitibus*, &c.

And I find the *Mandamus* to the Lords Temporal, *Anno* 23 E. 1. *bis*, *et Anno* 24 E. & *Anno* 2 E. 2. to be *In fide et dilectione* as to the Biſhops, *Anno* 6 Ric. 2. *Conſimile* to the Duke of *Lancaſter*. But

But in all other Summons *In fide et ho*
*gio* untill 22 *Ed.* 3. and 25 *Ed.* 3. And t
the ſummons to the King of *Scots*, and Pri
of *Wales*, *In fide et Legiantia*: And *A*
45 E. 3. *Conſimile* to them all, and ſ
continues to t day.

*Vobis Mandamus in fide et legiantia q*
*bus nobis tenemini, firmiter Injungentes q*
&c.

## *The next obſervation in the Writ of Summons is what they are commanded to do:*

The Lords Spiritual and Temporal
*Tractatur cum Rege, et Cæteris Prælat*
*Magnatibus, et proceribus et Conſilium*
*um impenſur.* But the forms hereof in t
auncient Writs of *E.* 1. are divers, *prout.*

*To the Biſhops.*

*Anno* 23 *E.* 1. *Super quibuſdam Ard*
*negotijs nos et regnum noſtrum et vos*
*teroſq; Prælatos de eodem Regno tangentib*
*quæ ſine veſtra et eorum præſentia nolumus*
*pediri, vobis,* &c. *quod,* &c. *Sitis,* &c. *ſu*
*aictis Negotijs tractaturi, et veſtrum Conſ*
*um impenſuri,* 23 Junij.

*To the Temporall Lords.*

*EOdem* Anno 23 Junij, *ſupra quibuſdam*, &c. *Nos, et Regnum Noſtrum et vos cæteroſq; proceres et magnates de eodem Regno tangentibus quæ ſine*, &c. *Ut ſupra.*

*To the Judges*, eodem An.

*SUper quibuſdam arduis negotiis nos et Regnum noſtrum ac vos cæteroſq; de conſilio noſtro tangentibus quæ ſine*, &c. *Ut ſupra in Mandat. Epiſc.*

The Writ to the Biſhops recites the wrong done by the French King in *Gaſcony*, and his Army, prepared to invade *England* it ſelf: And then thus, 23 *Ed.* 1. 30 *September.*

*Quia proviſa facula minus lædant et res noſtra maxima ſicut cæterorum Regni conſilium agitur, in hac parte vobis Mandamus in fide et dilectione quibus nobis tenemini, firmiter injungentes quod die dominica proxima poſt Feſtum Sanct. Martini in hieme proxim. futurum apud* Weſtminſter, *perſonaliter interſitis permanentes Priorem et Capitulum*, &c. *Ad tractandum, ordinand. et faciendum nobiſcum*

*et cum Cæteris Prælatis et proceribus et aliis Incolis Regni nostri qualiter sit hujusmodi periculis, et excogitatis malitiis obviandum*, T.R. &c.

*Consimile* to the Earls and Barons, &c. omitting onely the Clause *Premunientes.*

By these words, *alijs Incolis Regni* are understood the Commons, who have no such command in any other Writ (this onely excepted) Neither had the Clergy any such command in any other Writ then this:

*Memorand.* that this time the King obtained a great subsidie of the Clergy and Laity.

To conclude this point, the Lords were summoned to treat with the K. and the other Lords, and to give their Counsel.

Onely in this last recited Writ is omitted to give Counsel.

## *The Judges and others of the Kings Councell.*

They are *Tractare cum Rege et cum Cæteris de consilio Regis et consilium suum impendere*, &c. *Prout nobiscum, et cum cæteris de consilio nostro superdictis Negotijs tractaturi, vestrumq; consilium impensuri*, &c.

*Consimile*

*Consimile* in most years of *Ed.* 1. yet their Writs were oftentimes all one with those to the Lords, *prout Anno* 23 *E.* 1. and 27 *E.* 1. and in most years of *E.* 2.

The first Parliament of *E.* 3. agreed with that of 28 of *E.* 1. *viz. Tractatur. vobiscum et cum Cateris de Consilio nostro vestrumque consilium impendere, prout Anno* 4 E. 3. & 5, 6. & 7. &c. *Usq;* 20 E. 3.

From the 20th year of *E.* 3. until the 46. their Writs agree with the Lords in this Clause (*viz.*) *Vobiscum et cum dictis Prelatis, Magnatibus, et proceribus dicti Regni nostri tractaturi, vestrumq; Consilium impensuri.*

And in two Parliaments of *E.* 3. (*viz.*) *Anno* 1 *E.* 3. 11 *Decemb.* & 2 *E.* 3. it is *Nobiscum tractatur.* &c. omitting *et cum Cateris de Consilio.*

*Anno* 27 *E.* 1. it is *Nobiscum et cum Prelatis, Magnatibus, et proceribus et alijs de consilio nostro,* &c.

But from 46 of *E.* 3. to this day it agrees with that of 28° *E.* 1. (*viz.*) *Nobiscum et cum ceteris de consilio nostro,* &c.

*Per Clerum.*

THe Biſhops were ſummoned to appear themſelves in perſon, and to warn the Clergy of their Dioceſs to appear in this manner (*viz.*)

The Dean and Pryor of their Church, and the Arch-Deacons of every Deanery of the Dioceſs to appear in perſon.

The *Chapter* of the Church were to ſend one Proctor, and the Clergy of the Dioceſs two, *Plenam et ſufficientem poteſtatem ab ipſi Capitulo et Clero habentes, ad faciendum, et conſentiendum iis quæ tunc ibidem de communi conſilio (divina favente Clementia) ordinari contigerint*, &c. *Anno* E. 3.

In the firſt ſummons *Anno* 23 E. 1. where this Clauſe is recorded in the Biſhops Writs it is.

*Ad tractandum, ordinandum, et faciendum nobiſc. et cum Cæteris Prælatis, et Proceribus, et aliis Incolis Regni noſtri*, &c.

But this cannot be alledged for a præcedent, for it is not to be found in any of the former, or ſubſequent Writs, they all agreeing with this of 4 *E.* 3.

Here may be a queſtion, whether the Clergy did anciently come to the Parliament (without

(without the Kings W R I T they cannot come) And they are omitted in the first Summons which we have recorded (*viz.*) *An°* 49 *H.* 3. And in the first Parliament of 23 E. 1. and in divers other following Parliaments, *prout An°* 27 E: 1: *Febr.* 6. *An°* 28 E: 1: *Septemb.* 26. *An°* 3 E: 2: *Octob.* 26. *An°* 16 E: 2: *Septemb.* 18. & *An°* 6 E: 3: 26 *July*, but never after the 6 year of E. 3. *quare rationem.*

*Per Communitatem.*

The Commons were not summoned, but elected upon the Kings Writs to the Sheriff, &c. as shall be declared in the end of this Chapter, and were commanded to come to the Parliament, *Plenam, et sufficientem potestatem habentes ad faciend. et consentiend. de hijs quæ de communi consilio (faventi Dom.) ordinari contigerint*, &c. *An.* 4 E. 3.

With this Writ agree all the former and subsequent Writs, divers additions have been by statute touching the Election, but this Clause never altered.

The Lords Spirituall and Temporal are to treat with the King, and the other Lords present, and to give their counsel.

The Judges are to treat with the King and the reſt of his learned Councel.

The Clergy are to come with power to do and conſent unto that which ſhall be ordained by the Common Councel of the Land, the Parliaments.

And this is the cauſe that all Judgements in Parliament were given by the Lords, and not by the Commons, yet they were parties to the Refuſall of Judgements given in Parliaments.

All Petitions directed to the King and his Councel were handled by the Judges (and by the Kings Councel) and by them prepared for the Lords (if need were) but never by the Commons.

All Ordinances made in Parliament (*in Pleno Parliamento*) were made by the Lords and Commons) all Ordinances made *per commune Concilium*, were made by the Lords and Commons. But of this more in the ſecond Book.

I will onely add this; whatſoever began by the Commons was anciently termed (*Petition*) for they had no power to ordain: And whatſoever began with the Lords, (*An Ordinance.*)

Petitions were exhibited by private perſons to the King and his Councel, or to the Commons.

Ordinan-

Ordinances were either by the Lords alone about some particular busines, or an Act of the Lords and Commons, and consented unto by the King, but not to have continuance for ever.

*Actus Parliamenti*, was an Act made by the Lords and Commons, (*statutum*) when the King had consented to the Act.

### *By what warrant the Writs of Summons were made.*

IT hath not appear by the first Record of Summons now extant, *Anno* 49 *H.* 3. by what Warrant the Lord Chancellor caused the Writ of Summons to be made, the King was then prisoner unto *Maunsford*, his sometime Minion.

But Surely none but the King can summon the Parliament; and this is the Reason that *H.* 4. having taken his Liege Lord, King *Rich:* 2. prisoner, on the 20th. day of *August. Anno* 23. did cause the Writs of Summons for the Parliament, wherein he obtained the Crown, to bear date the 19 day of the same moneth, and the warrant to be *per ipsum Regem & consilium*, and himselfe to be summoned by the name of *Henry* Duke of *Lancaster*.

The Warrant hath been divers, sometimes *per breve de privato sigillo*, but commonly *per ipsum Regem*, or *per ipsum Regem & Consilium*.

If the King hath been absent, and a *Custos* appointed (as the manner is,) the Writ beareth the *Teste* by the *Custos*, and the Warrant is *per ipsum Regem, & dominum Custodem, & Consilium*, *prout*, Anno 3 E. 3. *Teste Edwardo Duce Cornubiæ*, &c. *Custode Angliæ*.

*Per ipsum Regem, et Dominum Custodem, & Consilium*, Anno 20 E. 3. *Consimili*, Anno 9 H. 5. *Teste Johanne Duce Bedford, Custode Angliæ*.

*Per ipsum Regem & Consilium*. Anno 9 H. 6. The King being in *Fran.* *Teste Humphredo Duce Glocester, Custode Angl. per breve de privato Consilio*.

But if the King be within the Land, though (within Age) and a Protector appointed him, he alone is *Teste* to the Writ, and Warrant, *per ipsum Regem*, *prout*: Anno 1 H. 6. and sometimes *per ipsum Regem & Consilium*, &c.

But for many Summons, the Warrant is not recorded.

The

## The form of the Warrant.

IAMES by the grace of God, King of *England*, *Scotland*, *France*, and *Ireland*, Defender of the Faith, &c. To our Right Trusty, and wel-beloved Chancellour, *Thomas Egerton*, Chancellour of *England*, greeting. Whereas we by our Councell for certain great and urgent causes concerning Us, the good Estate and Common wealth of this our Realm, and of the Church of *England*, and for the good order and continuance of the same, have appointed and ordained a *Parliament* to be holden at our City of *Westminster*, the first day of *April* next coming; In which case divers and sundry Writs are to be directed forth under our great Seal of *England*, as well for the Prelates, Bishops, and Nobility of this our Realm, as also for the Election of Knights, Citizens, and Burgesses of the several Counties, Cities, and Borough Towns of the same to be present at the said *Parliament*, at the day and place aforesaid.

Wherefore We will and command you forthwith upon the Receipt hereof, and by Warrant of the same, to cause such and so many

many Writs to be made and ſealed under Our great Seal for the accompliſhment of the ſame, as in like Caſes hath been heretofore uſed and accuſtomed: And this Bill ſigned with Our hand, ſhall be as well unto you as to every ſuch Clark and Clarks, as ſhall make, or paſſe the ſame, a ſufficient Warrant in that behalf. Given, &c.

The Warrant is generall, and directs not the Lord Chancellor unto whom he ſhall direct the Writs of Summons, nor to omit any that were ſummoned the Parliament before. And yet it is apparent that many Lords (though living) have been omitted, and that the Father who hath been often ſummoned in his life time, being dead, his ſon nor none of his poſterity have ever been after ſummoned.

This gives more occaſion to ſhew what right the Nobility have had to be ſummoned, and upon what occaſions they have been omitted.

Firſt for their Right, the King at this day inſerts into the patent of creation of a Baron, that he ſhould be ſummoned to Parliament, ſo that the queſtion doth reſt onely upon thoſe Barons who had no patent of Creation; for the Earles had Charters; and

no

doubt was ever made of them. The doubt
eth out of this, that divers Lords have
n called by Writs, the onely thing left us
orded to know them; for aunciently they
d no Patents, and yet their ſons and po-
rity wholly omitted, for it may ſeem it reſts
rly in the Kings will to call them again,
wholly omit them, and that they had no
ht to be called by their Creation.
o ſatisfie this, let us conſider of the cre-
ion of Earls (of whom there was no doubt)
d of the creation of Barons.
It cannot be denyed, but that Earls were
er created by an actual Ceremony, and
at anciently they had no Charter.
*Mandevile* Earl of *Eſſex* being the firſt
at had any (as the common opinion is)
ere being none extant before his time;
ow the queſtion is, whither the honour
aſſe by creation without the Charter, or
o, as I ſuppoſe it did, and that the Charter
was to convey the Juriſdiction anciently,
nd of latter times, the third penny of the
County, rather then for the honour; and
for this cauſe happily divers Earls uſed to
renew their Charters at the change of the
Prince, not to renew their honour, but to
confirm the grant of the Juriſdiction, or
third penny of the County from the Crown,
where-

wherefore I may affirm that the ceremo
of Investiture, &c. created the Earl, and
Charter of the Earldom.

*Earls that received their Charters.*

MAnnevile Earl of *Essex* created by
*Stephen*, his Charter was granted
again by *Maud* the Empress, and a Cha
ter was granted him again by her son
*Hen.* 2.

*Milo* Earl of *Hertford* created by *Ma*
the Empresse, and his Charter was grante
to him again by her son King *H.* 2.

These are extant with Sir *Robert Cot*
ton, *Anno* 1626. And if Charters
had been usually enrolled in thos
times, when the Jurisdiction of th
County was granted unto the Earl,
We should have had many mor
presidents.

Of the creation of Barons, I know there
are divers opinions, *viz.*

1. *That they are Barons by Creation.*
2. *Barons by Writ.*
3. *Barons by Tenure.*

The two latter are erroneous.

Touching

Dubbing Barons by creation, I do here intend those onely who have had no tent (as now they have) but were anciently created by an actuall Ceremony, even Earls anciently were.

No ancient Record can be produced that degree of honour did passe (no not among the barbarous Nations) without actu ceremony. Knighthood did ever require which is the lowest. And therefore I cannot conceive, but that the ancient Barons were created first before they had their Writs, and then having once been called by Writ, they had as good right for them and their posterity to be summoned ever after as the Earls had, so they kept their land.

To prove that Barons were created by ceremony, examine the Patents of 11 *R.* 2. to the Lord *John Beauchamp* of *Holt*, which some Antiquaries affirme to be the first Patent of the creation of a Baron, the words are (*Ipsum Johannem in unum Parium & Baronum Regni nostri Angliæ prefecimus*) *volentes quod idem Johannes, & hæred. masculi de corpore suo exeuntes statum Baronis obtineant, ac domini de Beauchamp & Barones de Kidermaster nuncupentur. In cujus rei testimonium*, &c.

H

*Teste*

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Teste

*Teste Rege apud* VVestminst. 10 *die Oct.*
It is strange to me that any should think [illegible]
[illegible] create the Lord [illegible]

TIGHTL

BOUND

[illegible]
and [illegible] him not: And his first Writ [illegible]
in *December* following, which is a good conclusion in my opinion, that he was created a Baron by Investiture of Robes before he had either patent or Writ.

*Barons by Writ.*

HOW can it be imagined that a Writ can create a Baron. The ground alledged for it is the great slaughter of the Rebellious Barons at the battle of *Evesham*, *Anno* 49 *H.* 3. And that therefore others were suddenly

Bealy created by Writ to convict the remainder of those Rebels; the foundation of this [illegible] is built upon a false ground. For that [illegible] H. 2. was summoned be-

Y

VOLUME

[illegible] Parliaments of *Edw.* 1. almost in [illegible] ments of *Edw.* 2. and many of *Edw.* 3. For they had then one and the self-same Writ as the Earls and Barons had. The Kings two Escheators have had the same Writ *Annis* 12. & 14 *Edw.* 2. I grant that divers have been called by Writ, and had the same Writ the Barons had, yea, and were ranked in the Close Rolls (by the Chancery Clerk) above divers ancient Barons, and afterwards omitted: But I deny that such were Barons, they were but *Peers*: For such men anciently

*Teste Rege apud* VVestminst. 10 *die O*
It is strange to me that any should think
this Patent should create the Lord *B*
*champ* a Baron.

It wants the very words of Creation,
saith (*Præfecimus*) we have created, and
*per præsentes præfecimus*, we do now c
him: so that out of all doubt he was cre
before, and the King by this Patent only
mitted the honour to his heirs Males as H
did in the first VVrit of Summons to *Br*
*stet*. Baron of *Vessey*, *Anno* 27 *H*. 6. *Cla*

But if *Beauchamp* were created before t
Patent, the question is how he was creat
I answer, neither by Patent nor by VVri
For the Patent is dated the 10th of *Octo*
and created him not: And his first Writ w
in *December* following, which is a good co
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*H*. 3. And that therefore others were sud-
denly

ly created by Writ to convict the remainder of those Rebels; the foundation of this error is built upon a false ground. For that Parliament of 49 *H.* 3. was summoned before the battle of *Evesham*;

To consider the deliverance of the Kings eldest son who was then a prisoner: and *Mountford* Earl of *Leicester* (chief Rebell) had his summons also, and divers others who were slain at that Battail on his part.

If the Writ without Investiture of Robes did enoble the party, then were all the Judges, the Kings Sergeants at Law, divers Deans, and Arch-Deacons (being Treasurers, or Keepers of the Privy Seal) or otherwise of the Kings Council, enobled in divers Parliaments of *Edw.* 1. almost in all Parliaments of *Edw.* 2. and many of *Edw.* 3. For they had then one and the self-same Writ as the Earls and Barons had. The Kings two Escheators have had the same Writ *Annis* 12. & 14 *Edw.* 2. I grant that divers have been called by Writ, and had the same Writ the Barons had, yea, and were ranked in the Close Rolls (by the Chancery Clerk) above divers ancient Barons, and afterwards omitted: But I deny that such were Barons, they were but *Peers*: For such men anciently

ently also summoned to Parliament, amongst the rest, I will cite one, (*viz.*) *Monuthermer*, who having married the Widow of the Earl of *Glouceſter*, and having a great part of the Earldom as her joynture, was ſummoned as an Earl during the minority of her ſon by *Ed* 1. And when the ſon came to Age, *Monuthermer* was ſummoned as a Baron, but his ſon and poſterity omitted.

*It may be objected, how theſe Peers could be diſcerned from the Barons, their Writs being all one?*

I anſwer, by their manner of appearance; for the Barons appeared in their Robes, ſuch as they had at their creation; the Peers did not, for they had none (or ſuch as were far different from the Barons Robes,) Surely no, for it had been a diſgrace to him afterwards to appear in Barons Robes, when he came but as Baron. It plainly appears that he was ſummoned *Ratione tenuræ tantum & non nobilitatis Ergo*, and ſo had no Robes.

Of

## Of Peers.

AS touching the opinion that the Father being ſummoned, his perſon was enobled; and if his Son be alſo ſummoned, his blood is enobled: I have obſerved, that 3. diſcents have been ſummoned, and yet were no Barons (*viz.*) *Anno* 49 *H.* 3.

*Radus de Camois* was ſummoned, and ranged in the Roll above all Barons, and *Ralph Camois* his ſon was ſummoned, *An.* 7 *E.* 2. And yet 7 *R.* 2. *Clauſ. membr.* 32 *dorſo, Tho: Camois* the Grand-child being choſen one of the Knights for *Surrey*, was diſcharged by the Kings Writ, *Quia ipſe, & quam plures Anteceſſores ſui Bannereti fuerint.* And K. *Richard* the ſecond ſummoned him to that very Parliament of *Anno* 7. and he was ſummoned ever after during his life.

I doubt not but the Heralds will affirme that *Ralph Camois* the Father and and Son, yea, and this *Thomas Camois* were Barons: But how will they then anſwer the Record of 7 *R.* 2. who ſaith they were *Bannerets*, a Title given to the Peers of that age, as that of *Milites* was in the time of *E.* 1. And Tenants in *Capite* in the time of King *John* (as ſhall be ſhewed hereafter) if they can prove

that *Thomas Camoys* enjoyed the precedency of place which his Grandfather had; *Anno* 49 *H.* 3. I am satisfied; till then I conceive, leaving others to their own better judgements, that *Camoys* was called to Parliament 3. diſcents, yet not being created a Baron by Inveſtiture of Robes, but onely called by Writ; he was but called a Barons Peer, and no Baron. And it ſeems to me that thoſe Claims of priviledge not to be impannelled of a Jury which occurre in our Year-books, were made by Peers, and not by Barons; For the tryall was by Record, whether ſummoned or not, and not by the Heralds for their Creation: For it is impoſſible but a Sheriffe of a County ſhould know a Baron of the ſame Shire by creation (if he were the firſt;) his appearance in the *Parliament* in Robes, and the Hatchments at his Fathers Funerall, if it deſcended unto him, would be ſo notorious, as the Sheriffe of the ſame Shire could not ſo miſtake, as to impannell him of a Jury, and the Bailiffe dwelling in the ſame, hindered to warn him to appear.

I know that the word *Peers* in two *Parliaments* of 15 *E.* 2. did ſignifie the Lords Spirituall, and Temporall, and all that had voyce in *Parliament* according to the ſignification

fication of the word. And in the 4 *E.* 3. all that were to be tryed by *Peers* 9. the Temporall Lords onely: but in all the ancient Statutes (penned by the Judges, & the Kings Serjeants) the Earls and Barons are so named, or else *Magnates.* And this word *Peers* is not found in any of them, save in those of 15 *E.* 2. Touching the banishment of the *Spencers*, whether did any of those Lords who were impannelled of a Jury, challenge the name or title of a Baron, *Vide Brooks Abridgement. Tit. Challenge, N°* 18.

The Cause alledged is, for that he was Banneret and Lord of *Parliament*, and had place there, and so ought not to be of a Jury.

And may it not be that he who was summoned to the *Parliament* as a Baron, during his life, also had voyce in *Parliament*, why not priviledged out of a *Parliament*, why may not so much be granted unto him as to a Banneret, not to be chosen Knight of the Shire? the Banneret might be summoned to the upper House, and therefore (in my opinion) ought not to serve in the lower House? why not the other priviledge upon the same reason? The very tryall upon such *Challenges* was whether summoned or not,

Not whether a Baron, or no Baron, which ſatisfies me, that they were no Barons, but Peers, and being ſummoned had the priviledges of Barons, both for that, and to be tryed by Peers, but were not ſo honourable.

Here may be a doubt, whether the Barons and Peers took place in the *Parliament-Houſe*, as they were ranked in the Liſts of Summons, then did *Richardus de Camoys*, being but a *Peer*, take place, *Anno* 49 *H.* 3. above all *Barons*, and ſo *Thomas Cromwell* the Grandchild was ranked, *Anno* 17 .. 2. and after for divers *Parliaments* above all *Barons*. If you peruſe thoſe ancient Summons, you ſhall not finde any one of them ranked aright.

*Vide Anno* 12 *E.* 3. where *Thomas* Earl of *Norfolke*, Marſhall of *England*, and the Kings Uncle, and the Earl of *Glouceſter*, and *Angus*, are placed in the middle of the *Barons*, and the Lord *Stafford*, an ancient *Baron* ranked loweſt ſave one.

*Vide Anno* 12 *Ed.* 3. where *Euſtachius de Hatch*, *John de Havering*, and *Henry de Pinkney* and others are ranked before *Henry* Earl of *Lancaſter* ſon and the Kings Nephew. *Vide* 1 *H.* 6. where the Earl Marſhal, the Earl of *March*, the Duke of *Exon*, and

the

and the Earl *Warren*, are ranked after divers Barons. *Anno* 3 *H.* 6. *Humphrey* Duke of *Glocester*, the Kings Uncle, and the Earl Marshall, are ranked together lowest of the Barons, save one: *Vide Consimil. Annis* 13 *E.* 3. 20 *H.* 6.

Neither shall you find the Lords placed alike in any two Summons: And the said *Thomas de Camoys* in divers *Parliaments* before 17 *R.* 2. And in all *Parliaments* after 3 H. 4. was ranked sometimes the lowest, and sometimes neer the lowest of all the Lords.

To prove that Peers were summoned as well as Earls, and Barons, *Vide* the ancient Manuscript of *Modus tenendi Parliamentum Cap. de Laicis summoneri debent omnes & singuli Comites, Barones & eorum pares.*

*Et vide Chartam Iohannis* R. *in Matthew Paris, pag.* 247. Where after the summons of the Arch-bishops, Bishops, Earls and Barons, *Majores Item summoneri faciemus*, &c. *Omnes alios qui in Capite tenent de nobis*, &c. It sets not down the quantity of their tenure, but it is expressed in that other ancient Manuscript to be 13 Knights fees for a Barons Peer, and 20 Knights fees for an Earls Peer.

*Et vide Rotul. Claus. Anno* 27 *E.* 3. after

ter the Writs of the Earls; *Consimiles litteræ diriguntur Baronibus & Militibus subscriptis*, &c. *Vide*, a List of the names of such as were beheaded with the Earl of *Lancaster* at *Boroughbridge*, *Anno* 15 *E.* 2. where many who were formerly summoned to *Parliament* as Lords are named Bannerets, *prout* Sir *Henry Tyes*, Sir *John Gifford*, Sir *Bartholomew de Badlesmere*, Sir *John Mowbray*, &c.

*Vide Etiam*, Summons to *Thomas de Bradeston*, An. *Ed.* 3. who was a Banneret, as appears by the Patent, *An: E.* 3. And *Ralphes Camoys* the Father, and son were summoned, *Annis H.* 3. *E.* 2. and *E.* 3. And yet *An.* 7 *R.* 2. *Clause* 32. the Record saith, that *Thomas Camoys*, and very many of his Ancestors were Bannerets, and therefore he was exempted from being Knight of the Shire, happily for that the King might summon him to *Parliament*, as he did his Ancestor *Ralph Camoys*

*Vide Etiam*, the *Parliament* Roll, *Anno* 18 *Ed.* 3. *n°.* 35 The Cause of Summons was declared in the presence of the King, and divers Lords there named (*& autres Barones & Banerettes Chivalers de Comites*) *Citiens & Burgeis sommons au dit Parliament.*

*E Anno* 46 *E.* 3. *n.* 7. The *Parliament* Roll, the Dukes, Earls, Barons, and Bannerets,

rets, and in divers Parliament Rolls of *E.* 3. often occurs by the Prelats, Earls, Barons, and other Grandees.

*Anno* 30 *E.* 3. *n°.* 8. the Earls and Barons being in Parliament, have granted for themselves, and for the Peers of the Land which hold by Barony the tenth Fleece, *&c.* In this Parliament the Commons granted a Subsidie by themselves, and the Lords granted another by themselves, amongst whom were reckoned their Peers. *Anno* 17 *E.* 3. *n°.* 6. *Per les Comites Barons, & autres Nobles,* these *autres Grandes*, and *autres Nobles*, could be none other then the Peers, all other degrees of honour being named.

These reasons give me satisfaction that Peers were summoned in the times of *H.* 3. *E.* 1. *E.* 2. *E.* 3. and *R.* 2. *&c.* as well as Barons, and they and their posterity omitted *ad Libitum Regis*; and divers painfull Antiquaries observing this Omission, and not knowing that they were but Peers, have been firm of opinion that the Writ did create a Baron, but it was (*ad libitum Regis*) to call his sonne, or to omit his whole posterity.

## *Of Barons by Tenure.*

TOuching the third kind of Barons by Tenure, it is erroneous as that by Writ. I have perused all the Precedents that are alleadged for it, and they are of the Lands conveyed by the Kings License to the Heir-Male, or the second sonne of the Ancestor that was created by Writ, (the same may be said of an Earldome also) For the Lord *Matrevers* being Heire Male, and having the Castle of *Arundel* by Intayle, was adjudged in Parliament, *Anno* 11 *H.* 6. to be Earl of *Arundel* by force of the Entayl.

Amongst the other Presidents may be added one of our time, of *Edward Nevill* Heir Male to the Lord *Abergavenny*, having the Land entailed on him, and the King summoning him by Writ, his Lordship took his ancient place: For the Ancestors being created by the Ceremony of Investiture, the same needs not to be renewed in any of his posterity, there the Writ alone is sufficient; for such honour is inheritable, and hath been disposed of with the Land, which is a good proof of the Barons right to come to Parl. (whereof more hereafter) but not that Land made honour, or carryed the honour; For they

they can alledge no president of a meer stranger in blood, and purchaser of the Lands of a Barony, though with the Kings licence, (otherwise the sale of no Land held in *Capite*, as all Baronies are, can be good against the King) have by vertue of the Land been called to Parliament, onely one comes near it.

That is of the Barony of *Latimer* of *Danby*, whose Daughter and Heir being married unto *John* Lord *Nevill*, and he called by VVrit in her Right, and had issue by her *John*, and *Elizabeth*; *John* the son dyed without issue, having first sould the Lordship of *Danby*, unto *George Nevill* the son of *Ralph*, the son of the said *John* the Father, by his first Wife; And afterwards the Heir generall making no claim unto the honor, the said *George Nevill* was summoned by *H.*6. to the Parliament.

But *Brooke* Lord *Willoughbye* the Heir general petitioned *H.*7. for the said Honor, and in my opinion, (had it not been for his Ancestors non claim, together with *Nevills* possession, iij. descents) he shewed the best right for it.

But if you please to peruse the Inquisitions *post mortem*, remaining in the *Tower*, you shall find very much Land held *per Baroniam*; even

even in ancient times in the hands of priva
Men, who were not then reputed Barons.

So that I am ſatisfied that no Barons ha
been ſummoned to *Parliament*, *Ratione n*
*ture*) onely Peers have.

It reſteth to ſpeak of the Omiſſions in the
Summoners (*viz.*) of the temporal Lords o
Parliament, not of the Clergy (who neve
loſt their Right) nor of the Peeres who
had none but for life, ſave *ad Libitum*
*Regis.*

If the Biſhop were dead, and the Sea void,
yet ſummons were directed, (*Cuſtodi ſpiri-*
*tualitatis Archiepatus Cantuarienſis, ſede va-*
*cante, &c.* An. 7. *E.* 3. *& alibi.*

If the Biſhop were beyond the Seas, yet
Summons were directed to him, *pro ut* Anno
xiij. E. 3. *R. Dunelm. Epiſcopo vel ejus vicario*
*generali, ipſo Epiſcopo in Remotis agente, &*
*alibi*

The Reaſon is, they are *Premunire Cleri-*
*cum, &c.*

So that Biſhops dead or alive, are ever
ſummoned, *Ratione Epiſcopalis dignitatis*
*& tenuræ*, And can the ſame Writ be denyed
unto Earles and Barons? ſurely no, the Par-
liament is (*Commune Conſilium*) the whole
Land hath intereſt therein, the Commons
appear there by their generall Procurators,
(the

(the Knights, Cittizens, and Burgeſſes,) and the Lords in perſon, or by their particular Procurators, and the preſence of the Lords and Commons is ſo neceſſary, that no Law can be made or revoked without them.

If a Peer was ſummoned, he was not omitted during his life, As appears by all ſummons, for the King would not diſhonor him whom he had honoured.

The ſame Right which a Peer had for life a Baron had of Inheritance, the very Creation by Inveſtiture of Roabs made it Inheritable, even to the Heirs general; otherwiſe what needeth *Richard* 2. An. 11. to limit by his Letters *Patents* before the firſt VVrit of ſummons the Baronage of *Kiderminſter* to the Heirs Males of the Lord *Beuchamp* of *Holt*, who was created by Inveſtiture of Roabs (as I have ſhewed before) or *H.* 6. An. 27. to limit by the firſt Writ of ſummons the Baronage of *Veſſey*, unto the Heirs Males of the Lord *Bromfflet*.

I do not affirm that the Husband or ſon of an Heir Female ought to be called to Parliament, but they have uſually been called to Parliament; And if ſuch Husband after that he hath iſſue Male, or ſuch ſon after the Barony is deſcended on him be called, before they have no right they took place accor-

according to the antiquity of their Ancestor, and were not new created, which shews the honor is Inheritable.

Nay if the chief Seat had been converted to the Heir Male, and he summoned to Parliament, he took place according to the Antiquity of the Barony.

And as the Barons honor is Inheritable, so their comming to *Parliament* hath ever been reckoned an essential point of Inheritable honor, as given them by the King at their first Creation (though not mentioned as now in their late Charters) And to deny that unto any one, that is due unto them all, is to dishonour him whom the Majesty of a King hath formerly honoured, whereof our Kings have ever been very Religious; Witness the president of *Roger de Quincye*, second Son to *Sayer* Earl of *Winchester*, whom *H.*3. summoned to the *Parliament*, supposing that *Robert* his Elder Brother (then in the holy Land) had been dead, and would not afterwards displace him, when his eldest brother returned, and petitioned for his right, because he had been lawfully summoned to Parliament, and there, and in other places had been void, whereby (saith the Precedent) the title of honour was setled, as an inheritance in him; it was unjust, but yet to preserve

ſerve the honour which the King had given.

There is another pleaſing Precedent of *Mountchermer*, whom *E.* 1. called to Parliament, as Earl of *Glouceſter*, for that he had married the Widdow, and had a great part of the Land, and when *Gilbert* the Heir came to Age, and petitioned for his Right, *Ed.* 2. granted it, yet ſummoned *Mountchermer* ever after as a Baron; ſo unwilling the King was to diſhonour him. Out of theſe precedents and my obſervation of all the ſummons in general which I have carefully peruſed, it appears plainly to me that the Lords have a double Right to be ſummoned to the Parliament, one gotten by long continuance and uſe, and another given by the King with their honour at their creation; (neither can I find) having made diligent ſearch that any Baron hath been omitted, if he were of full age, ſtood (*Rectus in Curia*) and were within the Land, unleſſe he had ſo diminiſhed his Revenews, as that he could not maintain the ſtate of his honour, whereof there are ſome few unpleaſing precedents, but ſuch cannot be produced of any Earl, for at his creation the King gave him for his Maintenance, the third penny of the County which could not be aliened.

*To proceed in the Commissions.*

EArles and Barons have been usually e
mitted, if they have been out of th
Land, *prout.*

An 10. *E.* 3. 9th. Summons were directed to (*viz.*)

*Robert de Ufford,* Com. *Suff.*
*Gilberto de Umfrevil*
Com. *de Angus.*
*Ranulpho de Dacre.*
*Bartho. de Burgherſh.*
*Joh. de Seagrave.*
*Egideo de Badleſmere.*
*Rado de Nevil.*
*Joh. de Tiptoft.*
*Rico. Talbott.*
*Henrico de Percye.*
*Rado de* Stafford.
*Thomæ de Berkeley.*
*Anthonio de Lucey.*

Et *Memorandum quod brevia iſtis Magnatibus immediate præſcriptis directa eſſend.*

ad

*d Parliamentum prædictum remissa fue-*
*unt Cancellar. Regis, pro eo quod quidam ex*
*s in partibus Scotiæ, & quidam ex eis in*
*artibus transmarinis in obsequio Regis*
*ciebant ad nullanda*; Anno 46. *E.* 3. and
divers years of *H.* 5. Few Earls and Bar-
ns were summoned, the King then being
his French Warres, And such omission
as thought to be no disparagement to their
onour.

But now since the opinion, that Omission
o be summoned did lose their Right hath
een broached by the not discerning of Peers
rom Barons, every Lord is carefull to be
ummoned, though he know he cannot
ppear, being beyond the Seas. As when
he Lord *Mountjoye* was Deputy in *Ireland*,
*Anno* 43. *Eliz.* he had his Writ, and sent his
Proxie.

Others have been omitted because they
did not stand *Rectus in Curia*, either their
title was *Litigious*, as was the Earl of *Arun-*
*dells*, *Anno* 11. *H.* 6. And the late Lord of
*Abergavennyes*; or they were restrained of
their liberty, being in the Kings displeasure,
as was the Earl of *Northumberland*, *Anno*
xviij. *Jacobi*, For then the VVrit of summons
is an Enlargement by Law as was resolved by
the Judges.

But

But I do not find any ancient precede
that any had their Writs denyed them, f
that they were in the Kings displeasu
onely.

For *Anno* 15. *E.* 3. the King was high
displeased with the Arch Bishop of *Cant*
*bury*, yet he had his VVrit, and came
Parliament, and humbled himself unto th
King, desiring to be tryed by his Peers.

It is true this Arch Bishop was at the fir
denyed his Entrance into the *Parliament*
House, yet at the Intercession of the Lord
he was admitted; *Vide plus de Antiquitat*
*Ecclesiæ Britannia, & Goodwin in vita sanct*
*Archiepiscop.*

*Anno* 5. *H.* 4. The Earl of *Northumber-*
*land* was summoned to the Parliament, to b
held at *Coventry*, 28. *December*, Notwith
standing he was suspected to be privy to the
treason of *Hotspur* his son.

This Parliament was prorogued *Cra.*
*Hill.* at *Westminster*, and the prorogation
being then by new Writs, the Earl of *Nor*
*thumberland* had none, yet he came to *Par*
liament, exhibited his petition, wherein he
acknowledged that he had done against his
Allegiance, and namely for gathering of men
and giving of Liveries against the statute, was
tryed by his Peers, who adjudged his action

to

be neither Felony, nor Treaſon, but one-
a treſpaſſe finable to the King, which the
ng pardoned. Now of late they which are
the Kings diſpleaſure, have had their ſum-
ons, but with a Letter from the Lord Chan-
llour, or Lord Keeper (not to come out
t) to ſend a Proxie.

But in the Parliament of the 6. of *Febru-*
*y, Anno Caroli Rs.* the Earl of *Briſtol* being
enyed his VVrit, petitioned the Parliament
r it, then he had his Writ without any in-
rceſſion of the Parliament Lords; But
ithall a Letter from the Lord Keeper ſigni-
ying his Majeſties pleaſure, tha. he forbear
o come, and ſend his Proxy; whereupon the
arl petitions the Parliament again, ſhewing,
hat that letter could not diſcharge him from
oming, the VVrit commanding him to
ome upon his Allegiance: but this point
was not then decided, for the Earl was pre-
ſently ſent for as a *Delinquent*, and charged
with Treaſon; *Omiſſion. ratione Minori-
tatis*, there be many preſidents for it as of
young *Gilbert de Clare*, Earl of *Glouceſter*,
in the laſt year of *E.* 1. But the King hath ſent
his Writ of Summons unto ſuch, before they
were fully xxi. being of years of diſcretion,
as the Lord *de la Ware*, Anno 20. *Ja-
cobi.*

*Anno* 3. H.6. *John* Lord *Roos*, being the under age, is named to be present in Parliament amongst other other Lords, nº 10 but his ſummons are not entred.

*Anno* 11. H.6. All the Lords are ſworn t the ſtatute of Retainers, made *Anno* 8 H. 6 and there it appears that the Duke of *Norfolke*, and the Earl of *Devonſhire* (though under age) were in Parliament in their place and did take the ſaid Oath, nº 15. yet neither of their ſummons were entered.

As the King hath not uſed to omit any Lord that hath been within the Land (*Rectus in Curia*) and of full age, ſo none have uſed to come to Parliament, untill he had received his VVrit of ſummons: But in ſuch caſe he may ſend to the Lord Chancellour for his VVrit, as the Earl *Marſhall* delivered his opinion in the caſe between *Nevill*, and *Fane*, *Anno* *Eliz.* The reaſon may be for that the Lord Chancellors warrants are general, *Vide* the Journall book, *Anno* xxixth. of *Elizabeth*, the Parliament began the 24th. of *October*, and the Earl of *Eſſex* came not, for that he received not his Writ, (through the negligence of the Meſſenger, ſaith the Journal, until the xviij. of *November*, His Lordſhip was then ſick, and appeared not until the 11th. of *January* following.

And

time in the Parliament of the xviij. *Jacobi*, the old Earl of *Hertford* dyed, and his Grandchild and Heir came not to the Parliament, because he had not received his Writ.

## *To the great Councell.*

Although the Kings of *England* have not omitted the Earls and Barons in the Summons of Parliament, unleſſe for the cauſes aforeſaid, yet they have uſually omitted divers of them in the Summons to the great Councell, *prout* in the Summons, *Anno* 9. E. 3. xxiij. *February*, the King ſummoned but five Earls, and Eleven Barons.

*Anno* 15. E. 3. 12. *January*, there were ſummoned but xxvi. of all ſorts.

*Anno* 16. E. 3. 12. *September*, & *eodem Anno*, 20. *November*, were ſummoned but a very few. And 21. E 3. there were ſummoned xxij. of all ſorts.

*Anno* 45. E. 3. there were ſummoned but xiij Earls and Barons, and ſo in divers years of E. 3.

Neither did E. 2. ſummon them all.

After E. 3. the ſummons to the great councel were under the privy ſeal, the reaſon may be of this omiſſion (for that the ſame

not being (*Commune Conſilium*) as the Parliament is, The Chancellour was appointed whom he ſhould ſummon, & had not a general warrant, *prout An.* 15 E. 3. the 32 *Junij*, the Writs being ſealed of that date, others were made, and this Note under-written, *viz. Mandamus quod ipſa brevia conſignata fuerunt*, 3. *die* Julij.

Vide with Sir *Robert Cottons* Warrants for Summons to the great Councel, *An.* 26. & 28 *H.* 6. on this manner. Firſt, the form of the Writ, then the names of ſuch Lords who were to be ſummoned, and underneath thus.

*Rex de Aviſamento Conſilij voluit & Mandavit cuſtodi privati ſigilli ſui quod literas ſeparales ſub eodem ſigillo faceret dominis prædictis dirigendas in forma prædicta.*

Signed by the Clerk *Tho: Kent.*

THere reſts yet one doubt to be ſatisfied (*viz.*) the Kings Warrant to the Chancellor being generall, how came it to paſſe that the Summons of Peers were omitted.

I anſwer, the words of the Warrant are to make ſuch Writs as are uſuall, and the uſe was to omit the ſummons of Peers without ſpecial direction from the King.

*Of*

## *Of Omiſſion of ſummoning of the Huſband of an Heire Female.*

WHere the Barony diſcends unto an Heir Female, the Husband of ſuch an Heir hath been omitted untill he hath had Iſſue Male by her, and be admitted upon his Petition of Grace unto the King, *quia*, the uſe hath been ſo; yet being admitted and ſummoned, he taketh place according to the antiquity of that Barony. I ſpeak of Barons by Creation of Inveſtiture and Writ onely, without any Patent. And this ſhews plainly that a Baron ſo created and ſummoned, his honour is inheritable.

It may be objected, That ſome Baronies diſcended unto an Heir Female, and her Huſband and poſterity ever after omitted. And ſome Baronies have diſcended unto two Siſters or more, and the husband of the elder ſiſter wholly omitted, and the younger huſband ſummoned 1° ſuch honour is not inheritable but during the life of the Iſſue male.

I anſw. This may happen upon divers occaſions: for 1° beſides the diſcent of honour, a certain number of Knights Fees ought to diſcend

diſcend alſo for the maintenance thereof.

Secondly, the Husband cannot be ſummoned *de jure*, untill he hath Iſſue Male, and petitioned for it.

Thirdly, If the Husband neglect his Petition, the Iſſue Male is to make his Claim by Petition to the King.

If any of theſe fail, the Omiſſion is juſt; and yet the honour is inheritable to the heir female, otherwiſe how could Sir *Humphrey Bowcher*, who married the younger daughter of the Lord *Cromwell* be admitted unto the ancient place of that Barony.

## *The forme of the ſeverall Writs of Summons at this day.*

### Anno 18 *Jacobi.*

*JAcobus Dei Gratia, Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei Defenſor, &c. Præclariſſimo filio noſtro Carolo, natu ſecundo modo Unico & Primogenito, Principi Walliæ, Duci Cornubiæ & Ebor. & Comiti Ceſtriæ ſalutem. quia de Aviſamento & aſſenſu conſilij noſtri pro quibuſd. Arduis Negotiis, Nos, ſtatum, defenſionem Regni noſtri Angliæ & Eccleſiæ Angliçanæ concernent. quoddam*

*Parli-*

*Parliamentum nostrum apud civitatem nostram* Westminster *sexto decimo die* Januarij *prox. futur. teneri ordinamus, & ibidem cum vobis ac cum Prælatis, Magnatibus, & Proceribus dict. Regni nostri colloq. habere & tractatum: vobis in fide & ligiantia quibus nobis tenemini firmiter Injungendo Mandamus, quod consideratis dictor. negotiorum arduitate, & periculis imminentib. cessante excusatione quacunque dict. die et loco personaliter interitis nobisc. et cum prælatis, Magnatibus, et proceribus prædict, super dictis negotiis tractat. vestrumq; consil. impensur, Et hoc sicut nos et honorem nostrum, ac salvation et defensionem Regni nostri et Ecclesiæ prædict. expeditionemq; dictor. negotior. diligitis nullatenus omittatis. T: meipso apud* Westminst 13 *die* Novemb. *Anno Regni nostri Angliæ, Franciæ, et Hiberniæ Decimo octavo, et Scotiæ quinquages. quarto.*

*Anno* 14 *Jac.* &c. *Jacob dei gratia Angl.* &c. *Præcharissimo Consanguineo suo Georgio Marchioni Bucking. magn. Admiral. Angliæ salutem. Quia de Avisamento.* &c.

*Jacobus dei gratia,* &c. *Charissimo Consanguineo Carolo Comiti Nottingh. salutem, quia de avisamento,* &c.

*Jacob. dei gratia, prædilect. et fideli nostro Lionello Cranfield Chr. Summo. Thesaurar. nostr.*

*noſtro Angliæ: cum nuper de aviſamento, et aſſenſu conſilij noſtri, pro quibuſd. arduis et urgentib. Negotijs, nos, ſtatum et defenſionem Regni noſtri Angl. et Eccleſiæ Anglican. concernent. præſens parliamen. noſtrum apud civitatem noſtram* Weſtminſt. *ſexto decimo die* Januarij *Ultimo preterito teneri Ordinavim. et ibid. cum Prælatis, Magnatib. et procerib. dict. Regni noſtri colloqu. haber. et tractat. vol. ſub fide & legiantia quibus nobis tenemini firmiter Injungendo Mandamus, quod conſideratis dictor. negotior. Arduitate et periculis imminentib. Ceſſante excuſatione quacunq; quarto decimo die inſtantis menſis* Novem. *ad præſens Parl. noſtrum perſonaliter interitis*, &c.

*R. prædilect. et fideli noſt. Edwardo Mountague de Broughton Chr. ſalutem conſimile.*

*Jacob. dei grat.* &c. *Henrico Grey de Groby Chr. ſalutem. quia de Aviſamento et aſſenſu*, &c. *Anno* 18 *Jacobi.*

*R. prædilect. et fideli ſuo Franciſco Ruſſell Bar. de le Thornhoughe Chr. ſalutem*, An. 20 Jacobi.

*Jacob. dei gratia*, &c. *Reverendiſſimo in Chriſto patri Tobiæ Archiepiſc. Eborum Angliæ Primat. et Metropolitano ſalut. quia de Aviſamento et aſſenſu conſilij noſtri pro quibuſdam arduis et urgentibus negotijs, nos, ſtatum, et defenſionem Regni noſtri Angliæ et*

*Eccleſiæ*

*Eccleſia Anglicana concernent. quoddam Parliamentum noſtrum apud Civitatem noſtr. &c.*

*Jacob. dei gratia, &c. Reverendiſſimo in Chriſto patri Jo: Epiſc. Sarum ſalutem, &c. cum nuper de Aviſamento, &c.*

## The form of the ancient Writ for the Election of the Knights, Citizens & Burgeſſes.

*Rex Vicecomiti Eborum ſalutem. Quia propter quædam Magn. et Ardua Negotia nos et ducatum noſtrum Aquitaniæ ac alias terras noſtras in partibus tranſmarinis, pro quibus ad eaſdem partes nuper ſolemnes Nuncios noſtros deſtinaverimus, contingentiaq; in ultimo parliam. noſtro a quibus certis cauſis terminari non potuerint, Parliament. noſtrum apud* Weſtminſt. *Die Lunæ in Craſt. quindenæ Paſchæ prox. futur. tenere, et cum prælatis Magnatib. et proceribus dicti noſt. Regni ordinavimus habere colloq; et tractat. ſuis precipimus, firmiter Injungentes quod ac dicto Com. duos Milites et ac qualib. civitate Com. illius duos cives, et de qualibet Burgo, duos Burgenſes, de diſcretioribus et ad laborandum potentioribus eligi, et eos ad dictum diem et locum venire*

*venire faciatis. Ita quod Milites plenam et ſufficientem potoſtat. per ſe et communitat. com. prædict. et dicti Cives et Burgenſes pro ſe et communitat. civitat. et Burgorum diviſim, ab ipſis habeant, ad faciend. et conſentiend. ijs qua tunc de communi conſilio (favente deo) ordinari contigerint ſuper negotiis ante dictis. Ita quod pro defect. hujuſmodi poteſtatis dicta negotia ineffecta non remaneant quovis modo, et Habeas ibid. nomina prædictorum Militum Civium, et Burgenſium, et hoc breve, et hoc ſicut nos et honorem noſtrũ et tranquillitatem et quietem dicti Regni diligitis, nullatenus omittatis, &c. T. Anno 5 E. 3. 17 Feb. per ipſum Regem.*

I have recited this Writ at large, as it may appear, that the Writ for the Commons was ſometimes ſpeciall, declaring the cauſe of Summons, as well as the ſummons to the Lords, therein the Writs did agree; but the Commons had not any power of themſelves, but from the County, City, or Borough that ſent them.

The like Writ was ſent, *Conſtabulario Dover et cuſtodi quinq; Portuum* for the election of two Barons out of every port, *&c.*

*Anno* 49 *H.* 3. A Writ went to every Sheriff to cauſe two Knights to be choſen out of every County.

And

And other Writs went to each City and Borough Town, not to the Major, or Bayliffe but *Civibus et Burgiensibus*, to send two Citizens, &c.

Another Writ went *Baronibus et probis hominibus quinq; portuum.*

It is worth the labour to search when, and upon what occasions the Writs altered.

## *Additions to the ancient Writ of Summons.*

*Anno* 14 *E.* 3. 25 *Augusti.* The Writ of Election agreed with that of 5 *Ed.* 3.

But when the Commons gave their answer touching the Subsidie demanded for the Wars, they desired leave to return into the Countrey to confer with their Neighbours, promising their endeavours for the same at the next Parliament: And withall desired that the Writ to the Sheriffs for Election of the Knights might have this Clause, *viz. Que deux miltz valuez Chivalers de Counte soient Esleuz et Envoiez ad prochein Parliament pur la commune, si que nul de eux ne soit Viscount ne autre Minister*, n°. 8.

Which

Which was thus far agreed on, *viz. Summons du dit Parliament diretz au Viſcounts y deux Chivalers Ceynct des Eſpees de Chiſcun Countie ſoient eſleuz pur eſtre en Meſme le Parl.* n°. 22.

And thereupon the next Writ had this Clauſe (*viz.*) *Tibi præcipimus quod de dicti Comitatu duos Milites gladiis cinctos*, &c. which continues to this day.

*Anno* 46 *E.* 3. An Ordinance was made, that neither Lawyers nor Sheriffs ſhould be returned Knights of the Shire, but Knights of the beſt worth in the County be returned, and choſen in full County, yet the Writ received an addition touching the Sheriffs only, which continues unto this day, *viz.*

*Nolumus autem quod tu, nec aliquis alius Vicecomes*, &c. *Anno* 1 *H.* 4. 25 *Aug.* the Writ had this Clauſe, (*viz.*)

*Nolumus autem quod tu ſeu aliquis alius Vice-comes Regni noſtri prædicti, aut apprentitius, ſeu aliquis alius homo ad legem aliqualiter ſit electus*, &c.

Whence it was called (meerly) the Laymans Parliament: *Anno* 7. & 8 *H.* 4. n°. 139. It was enacted by the Petition of the Commons, that Proclamation be firſt made in the next County Court after the Sheriffe hath received the Election to be made, *&c.*

That

That the Election be in full County wherein they ſhall proceed freely, and indifferently, notwithſtanding any prayer or commandment to the contrarry.

The names of the Knights choſen whether preſent or abſent, be ſet down in an Indenture under the ſeals of all men that did elect them.

And this Clauſe was added to the Writ, *viz. Et Electionem tuam in pleno Comitatu tuo ſcãm diſtincte & aperte ſub ſigillo tuo & ſigillis eorum qui electioni illi interfuerint, nobis in Cancellaria noſtra ad diem & locum in brevi Contentum certifices indilate*, *No:* 14.

*Anno* 11 *H.* 4. *n°* 39. At the Petition of the Commons it was enacted; That all Sheriffs that ſhall make retourn contrary to the Stat. of 7 *H.* 4. the Knight ſo choſen ſhall loſe his wages, *N°* 59. *Cap.* 1.

Note the Statute doth not ſay that the Retourn ſhall be void, and the Sheriffe upon a new Writ proceed to a new Election, as the practice is now with the the Commons.

*Anno* 1 *H.* 5. At the Petition of the Commons it was enacted; That none ſhall be choſen

choſen Knight, Citizen, or Burgeſs, but ſhall be reſiant, and ſhall be choſen by ſuch as are Reſiant alſo, *N°* 2. *Cap.* 1.

*An°* 8 *H.* 6. It is likewiſe enacted; That none but Reſiants ſhall be choſen by Reſiants that can diſpend 40 *s. per annum* Free-hold.

That the Sheriffe may examine the Free-holders upon Oath, how much he may diſpend by the year.

The Juſtices of Peace ſhall have power to enquire hereof.

If the Sheriffe be attainted for doing otherwiſe, he ſhall forfeit 100 *l.* and be impriſoned.

And the Knights returned otherwiſe ſhall loſe their wages. (*Nota*) It doth not ſay the Election ſhall be void.

And mention ſhall be made of this Ordinance in every Writ hereafter, *N°* 39. *Cap.* 7. *An.* 10 *H.* 6 *N°* 33. the Statute of 8 *H.* 6. *cap.* 7. is confirmed, and explained, that the Election ſhall be by Reſiants of 40 *s. per ann* Free-hold at the leaſt, *Cap.* 2.

But mention is not made of the Ordinance *An.* 8 *H.* 6.

*An.* 23 *H.* 6. *ca.* 15. The Satute of the 1 *H.* 5. & 8 of *H.* 6. are confirmed and enacted, That the Sheriffe when he hath received

ved the Writ ſhall direct a Precept under his Seal to the Mayor and Bayliffs of Cities and Boroughs.

That the Mayor and Bailiffs retourn the ſaid Precepts executed to the Sheriffs by the Indenture between them and the ſaid Sheriff to be made.

And the Sheriff ſhall make return of the Writ, and of the ſaid Return of the Mayor, and Bayliffs upon pain contained in the Statute of the 8. of *H.* 6. *Cap.* 7. And moreover to pay to every Knight, Citizen, and Burgeſs ſo choſen, and not returned by the Sheriff, 100 *l.*

And if the Mayor and Bayliffs ſhall retourn others then are ſo choſen, they ſhall forfeit to the King 40 *l.* and to the party choſen and not retourned 40 *l.*

*Nota*, It doth not ſay the Return ſhall be void.

And every Sheriff ſhall make due Elections of the Knights in full County between eight and nine in the forenoon without Colluſion, and make true Returns upon pain to forfeit 100 *l.* to the party that will ſue for the ſame. Provided that if the Knights, Citizens, and Burgeſſes duely retourned by the Sheriff be afterwards put out, and another put in his place

place, take it upon him, he ſhall forfeit to the King 100 *l.* and to the party ſo put out another 100 *l.* provided it be ſued for within 3. Moneths.

(*Nota*) It doth not ſay there ſhall be a new Election.

The Knights ſhall be notable Knights of the ſame County, or ſuch Eſquires or Gentlemen of the ſame County as are able to be Knights.

No man to be a Knight of the Shire which ſtandeth in the degree of a Yeoman.

This is the beſt ſtatute for the election of the Commons.

*Who are not to be choſen.*

ANno 46. *Ed.* 3. *no.* 16. It was ordained by Parliament, that no Sheriff ſhall be retorned nor accepted for Knights of the Shire, which Ordinance hath been conſtantly obſerved ever ſince; And by the ſame ſtatute it was ordained alſo, that no Lawyers who ſollicited ſuites for other men, ſhould be retorned, or accepted for Knights of the Shires, but the King willeth that Knights, and Serjeants of the beſt eſteem of the County be hereafter retorned Knights in the Parliament.

*Anno*

*Anno* 23. *H.* 6. *cap.* 15. It is enacted that none shall be chosen Knight of the Shire, which standeth in the degree of a Yeoman.

## *Who are to be exempted (if they please) from serving in the house of* Commons

KNights, Bannerets (which name is sometimes given to the Peers) used not anciently to serve in the house of *Commons*-for that the King might and did often summon such to the Parliament, as a Lord, Peer: and so his service was in the upper house.

That they were usually summoned, (it is declared before that they were exempted to serve in the house of *Commons*) appears by the Kings Writ, directed to the Sheriff of *Surrey*, for a new Election (*in loco Thoma Camoys, Chr. Banneret*) the reason is there set down, *Nos animadvertentes quod hujusmodi Baneretti ante hac Tempora in Milites Comitat. Ratione alicujus Parliamenti minime consueverunt*, 8. *October*, *Anno* 7. *R.* 2. *Claus Membrum* 32. *dorso.*

And *R.*2. did afterwards ſummon the ſaid *Tho: Camoys* to Parliament.

The Kings ſervants have had the ſame priviledge of Exemption.

This appears by the like VVrit for a new Election, in the place of *James Barners*, whom the King commanded to be diſcharged, *quia eſt de retinentia Regis, & familiaris & unus Militum cameræ Regis*, ib. *Anno* 7. *R.*2. 28. *October.*

The Princes his ſervants, and the Queens ſervants, might claim the like priviledges.

And no doubt but they have had the like priviledges, as may be gathered out of another Writ of the ſame, the 7th year of *R.*2 dated the 16. of *Octob.* for the diſcharge of *Thomas Morwell*: *Quia eſt de Retinentia, Chariſſimæ Dominæ & Matris noſtr. Johannæ Principiſſæ Walliæ*, but this was in thoſe ancient times, when men thought it a burthen to come and ſerve in Parliament: Even divers of the Lords themſelves obtained licence to be abſent, and not to ſerve during their lives. *Prout An:* 1 E. 4. part 1° *Membrum* 15 *Rex conceſſit H.* Bromfflet, *Domino de Veſſey quod ipſe durante vita ſit exoneratus de veniendo ad Parliament. & Conſilia Regis, &c.*

*Conſ. mil*

*Consimil. pro Domino* Beauchamp, *Anno* 2. *Ed.*4. *pat.*2. *Membr.* 10.

And the Kings Tenants in ancient demesn ever enjoyed this priviledge, *prout Fitzherbert, Tit. Parliamentum nº* 99. *&* 101.

But now they claim no such Exemption, neither do the Kings servants enjoy their ancient priviledges therein, being now usually chosen for Knights, and Burgesses, ever since Cardinal *Woolsey* had the great Seal; since which time the Commons enjoyed more priviledges then they claimed before.

Yet there are precedents, that if any being first chosen into the House of Commons, become afterwards the Kings servants, during the said *P*arliament, and summoned by writ to serve in the Upper House, that he ought to be remanded back again to the Commons House, *prout.*

Mr. *Ri. Ouslow* being of the lower House, *Anno* 5. *Eliz.* he was in the *interim* made the Queenes Sollicitor, and by Writ called to serve in the Upper House: The *S*peaker also dyed in the *interim*, The Commons petitioned for leave to chuse a new Speaker, Mr. *Ouslow* being sent to them by two of the Upper House, I suppose by two of the Attendants, was chosen their *S*peaker, but

the Houſe was divided in opinion.

*Anno* xviij. *Eli.* Mr. *Serjeant Jeffrey*, (being choſen Knight for *Suſſex*) was, in the *interim* of a prorogation, made the Queenes Serjeant, and called into the Upper Houſe by Writ: reſolved the xxvii. of *Febrn.* that according to former precedents he ought to ſerve in the Houſe of Commons.

*Anno* xxiij. *Eli.* the Houſe of Commons being met the xvj. of *January*, (unto which day the Parlament was prorogued) *Sir Robert Bell*, their late *Speaker* being dead, the Commons petitioned for leave to chuſe a new *Speaker*, and receiving anſwer for the ſame in the Upper Houſe: at their return Mr. Treaſurer reported that he had ſeen a Member of their houſe with the Lords (*viz*) Mr. *Popham* who had ſerved in the beginning of that Parliament as Burgeſſe of *Briſtow*, and in the interim of the Prorogation was choſen the Queens ſollicitor, and called by writ to the upper houſe, & moved that he might be remanded, wch. ſome thought not needful before he be choſen: (it ſhould ſeem they knew he was to be choſen their Speaker) yet upon reading of the precedent of Mr. *Onſlow*, *Ann.* 8. *Eliz.* the ſaid Mr. Treaſurer and others were ſent up to the Lords to demand Mr. *Popham*: anſwered, that the Lords had re-

reſolved he ſhould be ſent down, the rather becauſe he was a Member of the houſe of Commons, and they poſſeſt of him before he was ſollicitor or had any place of attendance in the higher houſe.

And Mr. *Anderſon* the Queens ſerjeant at Law, and Sir *Gilbert Gerrard* the Queens Attorny general brought him to the houſe of Commons.

Here I have cited 3 precedents, you may eaſily ſee the reaſon why theſe were remanded. *viz.* The Queen had reſolved to have them choſen Speakers, and not for that the Commons had any right otherwiſe to demand them. If *Bell* their Speaker had lived being made Lord chief Baron in the Interim of the prorogation, I doubt whether they would have remanded him or no; If it ſhould hold for a rule that the King cannot ſummon a Member of the houſe of Commons unto the upper houſe, then thoſe Lords who were Burgeſſes *Ann.* 18. *Jacobi, &c.* and created Barons in the Interim of the prorogation *viz.* the Lord *Brook*, and *Cranfield* might have been demanded alſo; compare thoſe 3 preſidents of 7 *R.* 2. and note *volenti non fit injuria.*

Chap.

## CHAP. II.

## *Of Appearance.*

IN the first Chapter was declared the severall Writs of *Summons*, and the diversity between *Peers* and *Barons*; and that anciently neither the Writ nor the Tenure created a Baron, but the Investiture of Robes onely, and the election of the Commons. This shews the manner of their Appearance being so summoned.

### *The appearance of the first day of Parliament.*

FIrst, Let us consider which is the first day of the Parliament: Then their manner of Appearance.

The Writ shewes the day whereon the Parliament is to begin: And anciently, though the King, and but a few of the Lords appeared then, but the Parliament was adjourned in expectance of the rest, yet that was reckoned the first day of the Parliament, If his Majesty were present, *pront 6 Edw. 3. Octabis sanct. Hillarij. & 14 Edw. 3.* in Lent.

*Anno*

*Anno* 15 *E.* 3. xv *Pasch.* and divers other Parliaments in his time, and in his Successors *R.* 2.

If the Parliament be prorogued, for that the King cannot intend it the same day, new Writs of Summons were sent out anciently, and another day appointed, *prout Anno* 23 *E.* 1. 2 *Novemb.*

*Anno* 23 *E.* 1. 13 *Julij, & An:* 11 *E.* 2. 3 *Martij, et An:* 6 *E.* 1. 11 *Decemb.* &c.

At this day if the Parliament be summoned, the day is appointed in the Writs; but if the same be prorogued by Writ patent (as the manner is now) and another day appointed; that is reckoned the first day when the King is present, and the cause of Summons declared.

Of this the precedents happen so daily I need not recite any.

This may be the Rule; that is the first day of the Parliament, when the King himself is first present, and this agrees both with the ancient and modern times.

*The first dayes appearance.*

NO Records speak of such solemnity as is used at this day, neither could it be with that State, the King lying in the same house,

houſe, and his Lodgings neer the ſame rooms where the Parl. was kept.

And it plainly appears by many Records of *E.* 3. That on the firſt day of the Parliament, a proclamation was made in *Weſtminſter* Hall, the Record ſayes (*Feaſt Crie fait*) by the Kings Commandment; That all that were ſummoned to Parliament ſhould repair to the painted Chamber, and ſo the Parliament began, that being reckoned the firſt day, though ſo few appeared: And it was adjourned to another day in expectation of the reſt, *pront An:* 37, 38. 40. 43. 45. 47 50 *E.* 3. Here could be no ſolemn proceſſion to the Parliament in ſuch ſtate as is now uſed.

But here may riſe a queſtion how it ſhould be known who were ſummoned, by which word was anciently underſtood the Commons as well as the Lords and Peers.

I anſwer, the Commons were called by the Retourns of the Sheriffs, the Lords were admitted in appearing in their Robes, not being created by Inveſtiture as the Earls and Barons were (*pront* in the former Chapter) and they were all called in the Houſe by the Clerks Roll before the King came. That the Lords were called, may be inferred by this, that the Parliaments have been often adjorned

adjourned the first day, because they were not all come, which could not otherwise be known but by the Call, so that they were called before it was adjourned: And it appears they were called the first day before the King came to Parliament of 18 *E.* 3. n° 5. which Parl. was adjourned also the first day for lack of appearance; and after the adjournment, and after the names of the Receivers and Tryers of Petitions, there is entered this Memorand. *viz.*

**Item**, Let the names of the Lords who are summoned to Parliament be viewed, read, and examined before the King in Parliament this day; and of them that are not come, let their names be delivered to the King in writing to ordain such punishment as he shall please, which shews plainly that the King was not present before when the Lords were called, for then this had been needless.

**The** next doubt is, In what place the Commons were called; The Record of *R.* 2. saith that the Knights and Burgesses were called by name in presence of the King, w^ch^ shews they stayed without till then.

And 2 *H.* 4. *Consimile.*

*Anno* 13 *H.* 4. the Knights and Burgesses were called at the door of the painted Chamber

ber in the presence of the Steward of the Kings house as the manner is.

And at this day they are called by their names by the Clark of the Crown in the presence of the Lord Steward in the Court of Requests, whereof there are many precedents in Q. *Eliz.* time.

Onely one precedent differs from all the latter (*viz.*) that of the 33 of *H.* 8. *Primo die Parliamenti*, where the Duke of *Suffolk* then Lord Steward commanded the Clark of the Parl. to read the names of the Commons, unto which every one answered, they being all in the Upper House below the Bar, and then the King came.

Now since the fifth year of Qu. *Eliz.* the Commons take the Oath of Supremacy; and since the third year of King *James*, they take the Oath of *Allegiance* also, which the Lord Steward administers unto some, and appoints certain of them his deputies, to give the same unto the rest.

The Lords are not called the first day, but have used to deliver their Writs onely to the Clerke of the Parliament: And the third day of the Parliam. the Summons being declared, and the Speaker being presented by the Commons; the second day the Lords are called by the Clerk of the Parliament, beginning

ning with the loweſt Baron, and ſo aſcending to the higheſt, and the Proxies and other excuſes (if any of the abſent Lords regiſtred. Here I muſt confeſs one of my own *Errata's*: For being ſuddenly commanded to call the Houſe, *Anno* 21 *Jac.* and unprovided of a Catalogue of their names, I made uſe of one then delivered me by the Earl Marſhall, and began at the upper end with the Prince, and ſo diſcended: I quickly found mine own Errour, but none elſe perceived it. I proceeded, which I obſerved here leaſt my Succeſſors miſtake alſo by that precedent.

## *When the LORDS are to appear in their Robes.*

The Heraulds can give the beſt ſatisfaction when the King and the Lords did firſt go to the Parliament in ſuch ſolemn manner as now, I have a precedent thereof in my Uncle *Boyers* Collections of Honour and Armes: I doubt not but the Lords did ever appear in their Robes the firſt day, whereof we have no Parliament Records before the Journal books of *H.* 8. all the former being loſt.

The

The Lords appear in their *Robes* alſo whenſoever the King is preſent (if their Lordſhips have notice thereof.)

And when their Lordſhips give judgment, and when the King gives the Royal aſſent to any one Bill or more by his Letters Patents, or ſends a Commiſſion to adjorn, prorogue, or diſſolve the Parliament.

And in thoſe caſes the Lords ſit all in their due places untill the Commiſſion be read, and then the Lords Commiſſioners are to ſit on formes overthwart the upper end of the Houſe to execute their Commiſſion.

Note this to be underſtood of ſuch adjornment, *&c.* by the Commiſſion, as the King himſelf hath uſed to be preſent at in perſon (*viz.*) of Adjornments, Prorogations, or Diſſolutions of Parliament (*Sedente Curia*) But if the Parliament be adjourned, or Prorogued (*ſedente Curia*) and afterwards the King by *Proclamation* prorogue the ſame to a further day (which happens often) in thoſe caſes the Lords Commiſſioners appear not in their Robes, for that the King himſelf never uſed to be preſent at any ſuch adjournment in perſon.

If a Lord of Parliament either by the miſpriſion of the Clerk or otherwiſe, be not ranked in his due place, and complains thereof,

f, the Houſe appoints a Committee to earch the Records for his due place, where-nto he is admitted without any other Cere-nony, for that he is in the Houſe already; *vide* the Earl of *Surrey*, *Anno* 6 *H.* 8. 15 *Febr.*

The Lord *Morley*, *Anno* 25 *H.* 8. 24 *Martij.*

The Lord *Clinton and Stafford*, An. 4. & 5 *Ph. & M.* 12 *Feb.*

But if the Lord that is ſummoned doth forbear to come becauſe he is not ranked in his right place;

His claim is firſt to be derived by the houſe upon his Petition to the King, and then his Lordſhip is to be brought in his Robes between two Lords in their Robes. Alſo the King of Armes going before; *Vide* the Lord *de-la-Ware*, An: 39 *Eliz.* 24 *Octob.* 15 & 24 *Novemb.* If a Lord of Parliament dies in the interim of a Prorogation, and his ſon receives his Writ to appear at the next Seſſion; his Lordſhip appeareth not in his Robes, for that Ceremony was performed by his Father the firſt day of Parliament; Onely he delivers his Writ to the Clerk who enters it the ſame day; *vide Anno* 7 *Jacob. Richardus Com. Dorſet*, and there be very many precedents of this nature (*viz.*) That the

the Writ is onely recorded in such cases, and not a word of their appearance in Robes.

And it were very fit the Lords did continue this order to deliver their first Writs to the Clerk to be entred: For it records their pedigree as well as the time of their first coming to parl.

If a Lord of Parliament dyes (*sedente Curia*) and his Heir be summoned, he appears also without any ceremony, onely his first Writ is entred, and the day of his apperance, *prout An: 27 Eliz. 9 Feb. Tho: Dom. Darcy de Chiche*, and there be many precedents of this nature also.

And I remember well that the Lord *Stanhop* of *Harrington* dying (*sedente Curia*) in Parliament of 18 *Jacob.* his son *Charls* Lord *Stanhop* came and took his due place without any other Ceremony.

So did *Edward* Earl of *Dorset* after the death of his brother *Rich:* who dyed without issue Male in the Parl. 21 *Jac.*

And I have observed that divers Bishops have been summoned after the parliament is begun, in place of another Bishop who was dead, and onely delivered his Writ to the Clerk to be entred without any other Ceremony, which was observed also in former times, *prout An: 27 Eliz. 23 & 27 March, Episc. Petriburgi.*

If

If the eldeſt ſon of any Earle be ſummoned as a Baron after the Parliament is begun, he is to be brought in his Robes between thoſe two Lords, between whom he is to ſit, Garter King of Arms going with his coat half way upon his left Arm, and his Lordſhip is to preſent his Writ to the Lord Chancellor, and to ſtay by his Woolſack untill the Clerk hath read the ſame, and then to be placed by thoſe two Lords in his due place.

*Vide* a Preſident of this *Ann. 7. Jacobi* for the Lord *Clinton*, the eldeſt ſon of the Earl *Lincoln*, who delivered his Writ kneeling to the Lord Chancelor, and ſtood by him untill it was read.

*Vide Ann. 7. Jacobi Conſimile*, the Lord *Walden*.

And I remember well that the old Earl of *Lincoln* was very carefull both for the right place of his ſon, and the ancient ceremonies to be uſed at his ſons firſt appearance.

The reaſon why Garter King at Arms is to wayt, & wear his Coat but half way on, is for that his Lordſhip is in expectance of an Earldom, when Garter is to do him further ſervice, and to wear his Coat wholly on.

If a Lord be newly created during the Parliament, he is brought into the houſe by any two Lords of the ſame Form in their Robes,

Garter

Garter king of Arms going before with h
Coat wholly on, and his Lordſhip is to pr
ſent his Writ to the Lord Chancellor, whi
being read he is conducted to his place b
thoſe two Lords who brought him, Gart
going before, *prout* the Lord *Denny Ann.*
*Jacobi 7. Febr.*

And the Lord *Knyvet*, *Anno* 4. *Jacobi*
*Julii*, yet in the Parliament *Anno* 18. *Jacob*
20. *December*, the Viſcount *Colcheſter*
being newly created in the interim of the ad-
journment of that Parliament, And brought
in at the next acceſs; Garter King at Arms
carryed the Letters Patents of his ſaid crea-
tion and preſented the ſame to the then Lord
Keeper, and his Lordſhip delivered them to
the Viſcount and ſo imediately he was pla-
ced.

So was the Lord Viſcount *Rochford* brought
in the ſame day and ſo alſo were the Lords
*Brook*, *Mountague* and *Cranfield*, being all
new created Barons.

*Quære Ration.* why they preſented not the
Writs according to the ancient manner.

*Anno* 21 *Jacobi* 25 *Februarii* divers Lords
who were newly created and others who
were in by diſcent, and were then firſt ſum-
moned, they all having appeared the firſt day
of the Parliament in their Robes, were not-
with-

thſtanding brought in the firſt day of the rliament with the ſame ceremonies as be-ng to a Lord newly created after the Parli-ment is begun when the firſt appears:

The Earl Marſhall being preſent and directing the ſame.

The Names of the ſaid Lords

*George* Duke of *Buckingham* created a Duke efore the *P*arliament began.

*Henry* Earl of *Kent* came in by diſcent

*James* Earl of *Carlile* by new Creation,

*Lyonell*, Earl of Middleſex by new Crea-ion.

*Chriſtopher* Earl of *Angleſey* by new Crea-ion.

*William* Earl of *Denbigh* by new Crea-ion.

*Thomas* Viſcount *Andover* by new Crea-ion.

*Henry* Lord *de la Ware* by deſcent.

Lord *Barkley* by deſcent.

*Robert* Lord *Cary* of *Lepington* by new Creation.

And *William* Lord *Grey* of *Warke* by new Creation.

## CHAP. III.

### *Locus & Modus ſedendi.*

IT follows to ſhew in what place they meet and the manner of their ſitting.

*Whether the Lords and Commons did Anciently ſit in one Room together.*

VIde the ancient Manuſcript *Modus ſedendi Parliamenti Cap de Caſ. et Ind. difficilibus.*

*Cum dubitatio et Caſus difficilis Pacis vel guerræ emergat, &c. Injungatur per Regem ſeu ex parte Regis, ſi Rex non interſit cuilibet graduum Parium quod quilibet graduum ſedeat per ſe & liberetur Caſus ille Clerico ſuo inſcriptis, & in certo loco recitari faciant, ita quod ipſi Conſiderent inter ſe qualiter Melius procedi poterit in Caſuillo, &c.*

With this agrees that with the 6 of E 3 at the Parliament held at *Yorke. viz.*

The cauſe of Summons being touching *Scotland* the (prelates with the Clergy thereof by themſelves) the Dukes and Barons by them-

themſelves) and afterwards they delivered their Joint-anſwer to the King.

In the former Parliament of that year at *Weſtminſter Craſtino Mariæ*, the cauſe was touching *Ireland*: the Prelates conſulted by themſelves, and after they gave a Joint-Anſwer and they all joined in one grant of a ſubſidie to the King.

*Anno* 6. *E.* 3. *Octabis Hillarii* the Prelats treated by themſelves, ſo did the Lords, and ſo did the Commons, and afterwards their Joint-Anſwer was reported to the King by the Biſhop of *Wincheſter*.

By theſe precedents it appears plainly that the Lords and *C*ommons did firſt meet together in one Room, and yet had divers Rooms to conſult in, ſeverally and apart. But this doth not directly and plainly prove that the Lords and *C*ommons did ſit together in one Room.

The cauſe of Summons was declared to them altogether touching an aid for the King, they conſidered thereof and joined in grant of the ſubſidie upon condition to have their petitions granted, a joint *C*ommitte of the Lords and Commons are appointed to ſit upon the ſaid petitions from day to day until they be diſpatched and reduced into the form of a ſtatute, the Committes are

named as well the Lords as the Commons.

Yet the two Houſes ſat apart: alſo that Parliament, for many things are recorded to be done by the Lords, whereunto the Commons were not joyned.

It is more of curioſity then of neceſſity to ſearch for the truth of this matter.

*Anno* 50.E.3. the cauſe of Summons ended, the Commons were willed to withdraw themſelves to their ancient place in the Chapter Houſe of the Abbot of *Weſtminſter*, and there to treat and conſult amongſt themſelves.

This ſhewes plainly that they had a place aſſigned them of ould to ſit in apart.

And when the King pleaſeth he may have the Lords and Commons ſit together in one place as they did *Anno* 7. *Jacobi* in the Court of Requeſts, the Lords ſitting on the right hand by themſelves, and the Commons on the left hand, that day when the noble Prince *Henry*, was created Prince of *Wales*.

### *Whether the Commons did anciently ſit at conference with the Lords.*

I have heard it often mentioned whether the Commons did ſit anciently with the Lords or no.

I will not reſolve this doubt, for no Record can be produced on the one ſide or on the other, ſo that the uſage muſt direct us how it was in former times: And ſince the Commons do in other Matters enjoy more ample priviledges at this day then the ancient Records mentioned, divers privy Councellors, and others of the Kings ſervants being now of that houſe, from whence they were formerly exempted, (*prout* in the 1 Chapter) it is not likely that ſuch honourable perſonages would have waved this one priviledge, and ſtard in a crowd if they might have claimed a ſeat for their eaſe, which they never did claim *temporibus H.8. E.6. P. et M.* nor of Queen Elizabeth.

It will be ſaid that heretofore a Committee of the Lords have come into the houſe of Commons to confer with them which was uſed even in *Anno* 3. *H.*8 and there no doubt the Commons did ſit and the Lords with them.

It is true that this happened ſometimes but was not conſtantly obſerved and the Lords did (*diſcedere de ſac.*) to go thither as it is reſolved *Anno* 2. *R.* 2. *pl. Fui ſce. luce* now this is out of uſe.

Their

## *Their manner of ſitting in Parliament at this day.*

### The Kings Seat.

HIS Majeſtie ſits in the Chair of Eſtate whenſoever he is preſent; if repreſented by Commiſſioners either to begin or to hold the Parliament, the Commiſſioners (after the Commiſſion is read) do now ſit on the right ſide of the Chair of State beneath the ſteps.

*Anno* 51. *E.* 3. The Prince repreſented the King by Commiſſion and his Highneſs did ſit in the Chair of Eſtate.

No other Ancient precedent of Parliament-Record ſhews where ſuch *Commiſſioners* did ſit, neither *Anno* 3. *E.* 3. when *Lyonel* the Kings ſon held the Parliament. Nor *Anno Edward* 3 when *Edward* Prince of *Wales*, held the ſame, nor thoſe of *H.* 5. and *H.* 6. when the Kings were in *France*: *vide* the Journal of 28. of *Eliz.* Where the Lord Treaſurer Arch-Biſhop of *Canterburie Burleigh* Lord Treaſurer, and *Darby* Lord ſteward repreſented the Queens perſon by Commiſſion, and the manner thereof deſcribed at large.

The

The Princes place

HIS Highneſs ſeat is on the left hand of the chair of Eſtate, that in the right hand was anciently for the King of *Scotts*, when he uſed to come to our Parliaments.

The Kings childrens place.

IT is enacted *Anno* 31. *H* 8. *Cap.* 10 that none but the Kings children do preſume to ſit at any ſide of the Cloath of State.

The Kings *Vicegerent* in Eccleſiaſtical Juriſdiction his place.

HIS ſeat is by the ſaid Statute of 31. *H.* 8. on the right ſide of the Parliament Chamber, above the Arch-Biſhop of *Canterburie* upon the ſame forme.

The other officers are thus placed by the ſaid ſtatute (*viz*)

THE Lord Chancelor
The Lord Treaſurer.
The Lord Preſident of the Kings Councel
The Lord Privie Seale.

Being of the degrees of Barons of Parliament on the left ſide of the Parliament Chamber, on the higher part of the Form, of the ſame ſide, above all Dukes except only ſuch as ſhall happen to be the Kings ſon, the Kings Brother, the Kings Uncle, the Kings Nephew, or the Kings Brothers, or Siſters Son.

The great Chamberlain.
The Conſtable.
The Marſhal.
The Lord Admiral
The Lord Steward.
The Kings Chamberlain above all others of the ſame Eſtates and degrees.

*Vide Anno* 21 *Jacobi* the Duke of *Buckingham* was admiral and placed next to the privy Seal, and above the Lord great Chambelain; the Kings chief Secretary being of the degree of a Baron, above all Barons not having any of the offices above mentioned: and if a Biſhop then above all other Biſhops not having any of the offices above remembred.

It is alſo enacted by the ſaid ſtatute that if either the Lord Chancellor, Lord Treaſurer, and Preſident of the Kings Councel, Lord privie Seal or chief Secretary ſhall be under the degree of a Baron of Parliament, and

then ſuch of them as ſhall be under the ſaid degree ſhall be placed at the uppermoſt part of the ſack, the one of them above the other in order as above rehearſed,

On the right ſide of the Chair of State the Biſhops are thus rancked by the Statute of 31. *H.* 8. (*viz.*) upon one forme.

The Lord Arch-Biſhop of *Canterburie.*
The Lord Arch-Biſhop of *York.*
The Biſhop of *London.*
The Biſhop of *Durham.*
The Biſhop of *Winchester.*

Then all other Biſhops on the ſame ſide after their ancients as it hath been accuſtomed: But at this day two ArchBiſhops ſet upon one forme, and then the other Biſhops in order upon two forms on the right hand of the State.

The Earls ſit on the firſt forme of the left hand of the State, and on the firſt forme of the Clerks Woolſacks, ſit the Viſcounts.

The Barons ſit on the ſecond forme of the left hand of the State, and upon divers other formes a croſs the lower end of the houſe.

The

The Lord Chancellor, or the Lord Keeper (when the King is preſent, ſtands behind the cloath of State on the right hand) but when the King is not preſent, then his Lordſhip ſits on the Woolſack thwart the Houſe, the Seal and Mace by him.

The Judges ſit on the inner ſide of the Woolſacks.

The Kings learned Council ſit on the outſide of the Woolſack next the Earls

The Maſters of the Chancery ſit two on the ſame ſide, and two on the other ſides next the Biſhops.

The Clerk of the Crown, and the Clerk of the Parliament ſit on the lower Woolſack and have a Table before them.

And the Clerk of the Parl. hath two Clerks under him, who kneel behind the ſaid Woolſack, and write thereon.

When the King is preſent, none of the Lords are covered.

And the Judges and Attendants do ſtand up untill his Majeſtie wills them to ſit down.

When the King is abſent, the Lords do Reverence to the State, and ſalute the reſt at their entrance into the Houſe, and then take their place.

The Judges ſit alſo, but are not covered until the Lord Chancellor ſignifies the Lords pleaſures.

The

The Kings Council; and the Maſters of the Chancery ſit, but are never covered.

## CHAP. IV.

### *On what dayes the Parliament may not ſit.*

In the ancient Manuſcript, *De modo tenendi Parliamentum Chap. de diebus, & Horis, quod Parliament. non debet teneri Diebus Dominicis ſed cunctis alijs illo die excepto, & alijs triobus diebus ſcilicet omnium ſanctorum & Animarum, & Nat. ſanct. Johannis Bapt. poteſt teneri.*

Yet Parl. have been ſummoned to be held on the Sunday (*viz.*)

*Anno* 23 *E.* 1. 30 *Septemb. Die dominico prox. poſt Feſtum ſancti Martini in Hiem.* And the ſame was proroged by a new ſummons of *Novemb.* following to be held *Die dominico prox. poſt Feſtum beati Andreæ Apoſt.*

*Anno* 27 *E.* 1. 6 *Feb. Die dominico. An:* 28 *E.* 1. 24 *Decemb. Conſimile.*

*Et An:* 33 *E.* 1. 22 *Januar.* & 35 *Ed.* 1.

27

27 *Febr. An:* 1 *Ed.* 2. 19 *Januar. & eodem An:* 10 *Martij. An:* 2 *E.* 3. & 3, 4, 5, 6. & 7 & 16 *E.* 2.

*An:* 1, 2. & 4 *E.* 3. But none after 4 *E.* 3. There are not any Parl. Rolls extant to ſhew what the Parl. did on *Sunday.*

Yet I find that ſubſequent Parliam. have ſate on *Sunday, prout.*

*Anno* 6 E. 3. n. 7. *Saturday* the houſe of Commons had leave to depart, and the Commons commanded to attend unto the next day, on which the Parliament was diſſolved.

*Anno* 20 *E.* 3. *N°* 11. *in fine.* On *Friday* the Commons delivered in their Petitions, which were conſidered by the Lords, upon Saturday, Sunday, and Monday next following, and on that Monday they were anſwered.

*Vide Contrarium*, An: 5. R. 2. The parl. was ſummoned to be held *Craſt. omn. Anim.* which fell out to be on Sunday, and therefore it was adjorned unto Monday *no:* 1.

I find no Parliament ſummoned to be held on *All Saints* day, *All Souls*, or St. *John Baptiſts.*

*Chri-*

*Chriſtmas day.*

*Anno* 3 *E.* 6. The *Parl.* did ſit on *Chriſtmas day*, and read two Bills, and on St. *Stephens* day, and read one Bill: And on St. *Johns* day, but this is ſingular, and occaſioned through the troubleſome buſineſſe of the Duke of *Somerſet*.

*Convocation dayes.*

*Anno* 1 *H.* 8. The Temporall Lords met in Convocation day, though they did no other buſineſs then receive Bils from the Commons, and ſometimes not ſo much. And on thoſe dayes ſome one of the Lords (though none of the great Officers) *Ex mandato domini Regis, qui domini ſpirituales abſentes, & in convocatione occupati ſunt*) *Continuavit Parliamentum uſq; in diem Craſtinum*) The Lord Chancellor was then a Biſhop, and abſent alſo.

This continued untill the 7 of *H.* 8. which year the Lord Chancellor did the day before continue alſo the *Parl.* untill the day after, *prout*.

*Anno*

*Anno* 7. *H.* 8 30 Novem *Dominus Cancellarius propterea quod Dom. ſpirituales in Convocatione Craſtino die, occupandi, continuavit præſens Parliament. uſque in diem Lunæ.*

The next precedent for Convocation days is *An:* 25 *H.* 8. For from the 17th until then we have no Journals.

*Memorand. quod die Sabbati* 22 Januarij (3° *die Parliam.*) *decretum eſt quod Domini ſpirituales in Convocatione diebus Martij, & Veneris proxim. ſequent. & ex tunc die Vener.* (*donec ſecus melius videtur*) *verſari poſſent. et proceres ſequentibus diebus ſine Impedimento quotidie circa dimidietat. horæ octav. ante meridiem in locis conſuetis ſimul convenirent, ad tractandum et Conſulendum circa Reipublicæ negotia.*

Afterwards in this *Parl.* after the end of *Hillary* Term, this Friday was changed into Wedneſday every week, but no order is entered for it in the Journal book: *An:* 3 E. 6. 4 *Novem. Hodie aſſignat. eſt Die Veneris per Convent. Epiſc. et alior. ejuſd. ordinis Eccleſiar. in Eccleſia Pauli.*

Stat-

*Star-Chamber dayes.*

*Anno 25 H. 8. Mercurij 4. Februarij Hodie Domin. Cancellar. de quo die Craſtino domini circa ſtudia Negotia in Camera Stellata conſultari, et Dom. ſpirituales, Die Veneris in Convocatione converſati fuerint, ex conſenſu totius domus continuavit hoc præſens Parliamentum in diem Sabbathi hora conſueta.*

I find no other precedent directly for this and the Star-chamber days, being ſometimes one day in the week, ſometimes another; it appears not by ordinary continuances of the *Parl.* that many days was permitted, *Quia* a Star-chamber day. But when in Q. *Eliz.* time the Star-chamber day was ſetled to be on *Wedneſdays*, you ſhall not find that the Parliam did ſit on thoſe dayes in the Term-time.

Which was conſtantly obſerved alſo in the time of our late King *James*, until the Parliam. 18 *Iac* 24 *April die Martis*, upon motion made this day unto the Houſe, that there is a great cauſe in the middeſt of hearing to be heard in the Star-chamber to morrow. The Lords were contented, not to ſit to morrow in the morning.

Provided

Provided that it be not drawn into a precedent; but that this Houſe being the ſupream Court, may ſit upon a Star-chamber day, notwithſtanding the abſence of ſuch Lords as do uſe to attend that Court.

And accordingly the Houſe was adjorned unto the next day being *Wedneſday* in the afternoon.

And the next Star-chamber day being *Friday* the 26. of *April*; the Houſe did ſit both in the forenoon, and afternoon.

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## CHAP. V.

### *The making of* Proxies *prove the Lords Right to be ſummoned.*

THoſe Lords that could not appear according to their ſummons, made their *Proxies*, and even this ſhews their Right to be ſummoned, elſe what needed their *Proxies*.

But if they neither came, nor made *Proxies*, then for their diſobedience unto the Ks. Writ, they were amerced (*viz.*) Anciently an Earl at 100*l.* and a Baron at 100 marks.

Vide

Vide the ancient Manuſcript, *Modus tenendi Parliament. cap. de Inchoatione parliam.*

Which ſince was qualified many times (viz.) *An*: 31 *H.* 6. *N°* 46. A Duke was taxed at 100 *l.* an Earl at 100 Marks, and a Baron at 40 *l.* if he came not to *Parl.*

## The ancient form of Proxies.

*EXcellentiſſimo Principi ac Domino ſuo illuſtriſſimo Domino Edwardo, Dei Gratia, Regi Angliæ, et Franciæ, & Dom Hiberniæ ſuus humilis Capellanus Johannes Abbas de Stlbye Reverentia & honore cum jugi precum inſtantia apud deum quia impediment: variis, & Arduis Negotiis concernentib. reformationem ſtatus domus noſtræ ſumus multipliciter impediti quod inſtanti Parliamento veſtro apud* Weſtminſt. *in quinden. ſanct. Mich. prox. futur. tenendo ſine genum diſpendio dom. noſtræ prædict. perſonaliter eſſe non valemus.*

*Dilectos nobis in Chriſto & diſcretos viros dominos* Henry de Barton, & Will. de Merefield, *Cleric. Lincoln Eccleſiæ Canonicos, & eorum quemlib. per ſe ad comparend. & audiend. pro nobis in hoc Parliamento tract. & conſentiend. Una cum Prælatis & Regni procerib. ſuper ijs quæ ad Eccleſiæ dei, & ipſius Regni utilitatem expedientia videbuntur,*

*nec non ad allegand. proponend. & proband. causas absentiæ, et non Comparit. nostra personali. procurat. nostros conjunctim, et divisim, et eorum utrumq; per se et in solidum ordinamus, facimus, et constituimus per præsentes: Ratum et gratem Habitur. quicquid per dum procurator. nostros vel eorum alterum, Actum seu gestum extiterit in premissis. in cujus Rei Testimonium,* &c.

## Regist. de Selbye fol.

### *In what Causes Proxies were made without the King's License.*

IN divers Writs of Summons the King denied to accept of *Proxies, ea vice*

*Anno* 6 *E.* 3. 27 Januar. *Proxies* are absolutely denyed *ea vice.*

*Anno* 11 *R.* 2. 20 Martii, *Proxies* are also lately denyed, *ista vice.*

*Anno* 6 *R.* 2. 7 Januarij. *Proxies* are absolutely denyed, *ista vice*

*Anno* 27 *E* 3. 20 Novemb. *Proxies* are absolutely denyed, *ista vice.*

*Anno* 39 *E.* 3. 20 Januar. *Proxies* are denyed, *ista vice.* And the Lords demanded to appear the day before.

*Anno*

*Anno* 45 *E.* 3. 8 *Januar. Iſta vice* is left out, and is thus (*Scientes quod propter arduitatem*, &c. *Procuratores ſeu excuſationem aliquam legitimo Ceſſante impedimento pro vobis admittere nolumus* (which clauſe) *Legitimo Ceſſante impedimento*) all the former precedents have.

Hereupon the Lords that could not come, obtained the Kings Licenſe, and made *Proxies*, as did the Abbot of *Selbye*, *An.* 22 *E.* 3. whereas to the Parliament, *Anno* 26 *E.* 3. (which had not that clauſe) he ſent his *Proxy* without licenſe, nor expreſſed any cauſe for his abſence, ſave that he was hindred (*Impedimentis varijs, et arduis Negotiis*, for the Reformation of his Abbey.) *Vide Regiſtr. de Selbye* in the hands of Sir *Robert Cotton.*

But this and the cauſe of denying their abſence, *Iſta vice* (*Legitimo Ceſſante Impedimento*) inſerted in ſome ſpecial Writs, onely it ſeems that all other times they might make their *Proxies*, notwithſtanding they had not firſt obtained the Kings Licenſe.

I have not ſeen any other precedents for it of the ancient times, then that of the Abbot of *Selbye*; but under *H.* 8. it was uſuall in caſes of ſickneſs, *prout.*

*An.* 3 *H.* 8. 20 *Die Parliamenti Relat. eſt quod Abbas Salop. gravi infirmitate detinetur*

*netur quod hic intereſſe nequeat, & ideo conſtituit procuratores ſuos Epiſc. Covent. & Lichfield, & Comitem Salop. Conjunctim & diviſim.*

*Anno* 6 *H.* 8. 12° Febr. *Domin. Scroop de Upſall ægritud. detentus abeſt affidante ejus Famulo Jacobo Marſhall, ſuoſq; conſtituit Procuratores Alein de B: et Dom. Darcy.*

*An.* 28 *H.* 8. 10 Junij, *Conſimile pro Abb. Monaſt. Salop.*

*Anno* 26 *H.* 8. (*Conſimile*) *pro Domino Zouche.* By which it appears plainly they had not the Kings Licenſe; yet in ſuch caſes an *Affidavit* was made of their ſickneſs.

## *The Kings Licenſe to be abſent, and to make Proxies.*

I Have ſeen two Precedents thereof, *Anno* 22 *E.* 3. to the Abbot of *Selbye*, when the King had denyed in his Writ to allow of Proxies *ea vice.*

The other unto the ſaid Abbot, 2 *Hen.* 4 The firſt was under the privy Seal: Nay, the Abbots ſervant was ſo carefull, that he procured a Warrant under the Privy Seal of the Kings allowance of his Procurator.

The other 2 *H.* 4. was under the Signet onely, and they both teſtified the Lords name

name who procured the Licenſe from the King.

*The ancient forme of the Kings Licenſe to be abſent.*

*EDward per la Grace de dieu Roy d' Engleterre, et de France, et Signeur de Irland, a voſtre Ch. dudiem Abbey de Selbye Saluts. Coment q' per groſſes et urgeantz beſoigns touchants vous et reſte de noſtre Parliament a* Weſtminſt. *et ſur ce nous vous mandez par Brieffe ſouz noſtre graund Seale de cy eſtre in propr. perſone ſanz Faire Procurat. en tele partie; mentinent a la Requeſt. noſtre Chare et foiall Johann Darcye nous vouz tenons pur excuſe de voſtre venue in propre perſone a meſme noſtr. parlement, ceſt foitz iſſiu, q' faces un ſuffiſaunt Procurator de y Venir en Voſtre nom en maner appent nient Veillantz q vous ne ſoiz endamage ne'm peſche en temps a venir pur Reaſon de noſtre mandement, ſi nen ſoit q' un Choſe vous ſignifions per ceſtes nos litters. Don ſouz noſtre Privie Seal a* Weſtminſt. *le* 13 *jour de* Decemb. *An. de noſtre Regne de Angleterre* 22. *et de France ix°.*

*The Kings Licenſe of latter times.*

*Anno* 1 *H.* 8. 22. *Die Parliamenti Licentiatus eſt Abbas de Crowland per Cancell. et Theſaur. per procurator ſuos Alb. de Ramſey, et dictum Theſaur. id eſt.* The Chancellor and Treaſurer ſignified, that the King gave the Abbot Licenſe to depart, &c. And not that the Chancellor and Treaſurer gave him leave; *prout An°.* 6 *H.* 8. (in the beginning of the Book, *Abbas ſancti Auguſtini de Cont. abſence ex licentia Regis Dom. Bergavenny Nuncio, et conſtit. procuratores,* &c. And the Licenſe of divers others to be abſent is recorded in like manner.

Yet in theſe years ſome have their licenſes expreſſed to be *per literas dom. Regis prout eodem An. Dom. Haſtings abſens ex licentia Dom. Regis et patet per literas ibid.* 9 *Feb. Conſimile pro Abb. ſancti Benedicti de Hulmo.*

*An:* 7 *H.* 8. 1° *P. die hodie recepta eſt billa Regis Manu ſignata per quam dominus Rex licentiavit Edrum. Sutton Militem Dom. de Dudley,* &c.

*Conſimil. pro Abbat de Thorney et pro Ab. de Ramſey, et pro Ab. Salop.* Yet the Licenſe it ſelfe was not always ſhewen; *prout ibidem Dom.*

*Dom. Rex licentiavit Abb. de Malmſbury ut patet, ex dictis Abb. de Wynchcomb, Will: Cumpton Milite Nuntio exiſtente*, &c.

*An:* 25 *H.* 8. 28. 31. & 35 *H.* 8. the Proxies are endited thus ; *Litera procurat.* of ſuch a Lord, *Abſentis ex licentia Dom. Regis, Atteſtante* ſuch a one ; But whether the Licenſe were by word of Mouth, or otherwiſe by Bill ſigned with the Kings Hand, *non Conſtat.*

The Kings verball Licence is ſufficient ; Yet I ſuppoſe they then had for the moſt part a formall Licenſe ſigned by the King ; and it being not produced, a Teſtimonial thereof was required, which was ſometimes teſtified by a Lord, and ſometimes by a ſtranger ; *pront An:* 25 *H.* 8. 7 *Jan.*

*Litera Procurat. in quibus Abbas de Eveſham ſub Reg. grat. abſens, atteſtante Thoma Cromwel Arm. conſtituit procur.* &c.

*Lettres procurator. in quib. Dom. La Ware*, &c. *Atteſtante Thoma Cromwel*, &c.

*Litera*, &c. *Abbas de Crowland*, &c. *Atteſtante Magiſtro Cecill*, &c. *Litera*, &c. *Com. Eſſex*, &c. *atteſtante Com. Oxon.*

*Conſim. An:* 28. 31. &c. *H.* 8. and downward, neither the Licenſe nor any ſuch teſtimonial was required, onely it ſatisfied that the Letters of Proxie mentioned the Kings

Licenſe, which none will preſume on unleſs he had it.

### *Unto whom Proxies may be made.*

A Proxy cannot be made to a Lord that is abſent himſelf. *Vide An.* 38 *H.* 8. *in fine Libri* Journal this entrance (*viz.*)

The Lord *Latimer* ſent his Proxy, which the Clerk received, but was repealed by the Lord Chancellor, for that the Lord *Latimers* Deputies were not preſent.

So if the Lord unto whom the proxy is made, be afterwards abſent, the Proxy is void; Yea, although the Procurator be abſent *ex licentia Regis*, and hath made a procurator alſo for himſelf, for the proxy is but an authority to give another mans aſſent, which cannot be transferred to a 3d. perſon. And therefore in ſuch caſe the Lord *Vaux* made a ſecond proxy *Anno* 18 *Jacobi Regis*, which I think was rather to detain his particular Vote (a dignity particular to the Lords of Parl.) then to avoid the Kings diſpleaſure) The firſt proxy being a ſufficient excuſe for his abſence.

Neither is it the uſe now to make proxies unto ſtrangers who are no Members of the Houſe, nor to any of the Attendants, as to the

the Judges, Barons of the Exchequer, or the like.

Yet there are divers precedents that the Spirituall Lords have made proxies unto ſtrangers; *prout* the Abbot of *Selbye* made *John Gouldale* a Monck of that houſe, and M *Will: R. Clerk* his Procurator.

*Anno E.* 3. the year is not recorded.

And divers other precedents there are of this nature. The Lords Temporal had then the like right, and we may gueſs that they did make the like Proxies unto Strangers by this, that *Anno* 14 *Edw.* 3. in *Middle Lent*, Mounſ. *William Stot*, and Mounſ. *Will: de la Pool* were not ſummoned, and yet were appointed Tryers of Petitions, a matter belonging to the Lords of the upper Houſe:

So we may gueſs they came with Proxies not of any Spiritual Lords (for they ſent Clergymen) but of the Temporal Lords, for they have the title of *Monſieur*, which ſheweth they were Laymen.

So we may gueſs alſo that *Monſieur de ſanct. Paul*, *Monſieur John de Pultenye*, *Monſ. Thomas Rookbie*, came with Proxies to that Parl. for they were not ſummoned; and yet of divers Committees *promiſcue* with other Lords in matters touching *Flanders*, *Bruxels*, and the Marches of *Scotland*.

*Anno*

*An.* 14 Edw. 3. *n°.* 13, 14. & 17. So that ſtrangers had Proxies, place, and voice in Parl.

But the queſtion is, where they did ſit? ſurely not in that Lords ſeat whole procurator he was; yet they do ſo at a generall Councel or Dyet beyond the Seas.

*The form of the Kings Licenſe to be abſent at this day*

The firſt extant is in the Journal of 8 *Eliz.* in *hac ver.*

RIght Truſty, and wel-beloved, We greet you well. Whereas we are informed that by reaſon of ſickneſs you are not able to make your repair hither, to this our Seſſion of Parl. to be holden at *Weſtminſt.* We have thought good by theſe our Letters to diſpenſe you for your abſenſe, and to licenſe you to remain ſtill at home for this time, ſo nevertheleſs that you do ſend up your Proxy to ſome ſuch perſonage as may be for you, and in your name give his Voyce, and aſſent, or deny to ſuch matters as ſhall be treated and concluded upon in our ſaid Parl. and this our Letters ſhall be your Warrant. Given under our Signet at our Palace at *Weſtminſt.* the 20 of *Septemb.* in the 8. year of our Reign.

*The*

## The form of the *Proxie* at this day.

*Omnibus Christi fidelibus ad quos hoc præsens scriptum pervenerit, Edwardus Dominus Zouche salutem. noveritis me præfatum Domini Zouche per licentiam. Serenissimi Domini nostri regis a præsenti hoc suo Parliamento tent. et in choato apud Westminster, duodecimo die mensis Februarii ult. preterit. sufficienter excusat abesse, nominare, ordinare, constituere dilect. mihi in Christo prænobilem, & honorand. virum Henricum Comit. Southamton præclarissimi Ordinis Garterii Militem, meum verum, Certum et in dubitatum factorem, Attornatum et procuratorem per presentes eidemque procuratori meo dare et concedere plenam authoritatem, et potestatem pro me et nomine meo et de super quibuscunque causis exponend. seu declarand. tractand. tractatibusq; hujusmodi mihi factis seu faciendis consilium nomine meo impendend. statutisq; etiam et ordinationibus quæ ex maturo, deliberato Indicio Dominorum tam spiritualium quam temporalium in eodem Parliamento congregator. inactitari, seu ordinari contigerint, nomine meo consentiendum eisdemque si opus fuerit sub scri-*

*ſcribend. cæteraque omnia et ſingula quæ in premiſſis neceſſaria fuerunt ſeu quo modo liber requiſita faciend. et exercend. in tam amplis modo et forma prout ego ipſe facere poſſem aut deberem ſi præſens perſonaliter intereſſem. ratum et gratum habens et habiturus totū et quicquid dictus procurator meus ſtatuerit aut fecerit in premiſſis; in cujus rei teſtimonium præſentibus ſubſcripſi ſigillumque meum apposui, datum decimo die Decemb. Anno Regni dicti Domini noſtri Jacobi Dei gratia Angliæ, Franciæ, et Hiberniæ Regis, fidei defenſor. &c, viceſimo, et Scotiæ quinquageſimo Septimo.*

*Omnibus Chriſti fidelibus ad quos hoc preſens ſcriptum pervenerit. I. domin. G. ſalutem. noveritis præfatum* Domin. G. *per licentiam ſereniſſimi Domini noſtri Regis a præſenti hoc ſuo Parliamento tento et inchoat, apud Weſtminſter duodecimo Die menſis Februarii* 1623 *Et continuat. per diverſas prorogationes uſq; ad & in viceſimum Diem April. ult. præteriit: ſufficienter excuſatum abeſſe; &c. ut ſupra.*

CHAP.

## CHAP. VI.

### *De Summon. Cauſa.*

BY whom the ſummons ought to be declared *vide manuſcript. de modo tenendi Parliament. Cap. de pronunciatione pro Parl. Cancel. Angliæ vel Capitalis juſticiarius qui tenet placita coram Rege vel alius honeſtus, & facundus juſticiarius vel clericus pronunciare debet cauſam Parliamenti, Primo in genere & poſtea in ſpecie.*

*Vide tamen* 9 H 6. *nº* 1. *Pro eo quod Johannes Epiſc. Eborum Cancellarius Angliæ, cui ratione officii ſui ſecundum conſuetudinem Regni Angliæ pertinuit cauſam ſumon. pronunciare, &c. infirmitate detinetur,* &c. *Magiſt. Henricus Lynwood legum Doctor de Mandato dicti cuſtodis declaravit,* &c.

And in the 5. of *E.* 3. the firſt Parliament now extant that hath the Journal proceedings of the Parliament (which anciently was not recorded) The Biſhop of *Wincheſter* being Chancellor declared the cauſe of ſummons.

*An.* 6. *E.* 3. *Cro. Mich. Conſimile.*

*An.* 6. *E.* 3. *Octabis poſt feſt: ſancti Gregorii*

the

the Arch-Biſhop of *Canterburie* declared the cauſe of Summons touching the Kings going into the holy Land with the French King: then the Biſhop *Wincheſter* being the Chancelor declared the ſame alſo: and afterwards the Lord chief-Iuſtice *Jefferie*, by the Kings commandement declared other cauſes for which the Parliament was ſummoned (*viz.*) to redreſſe the breach of peace, and other miſchiefs at home *n°* 6.

And when the breach of peace was handled, the Biſhops and the procurators for the Clergy departed all out of the houſe, for that it did not belong unto them. And ſo the Lord chief Juſtice was Speaker all that Parliament *n°* 10 et 12. and ſo the chief Juſtice was Speaker in many Parliaments in *E.* 3. and in the 2 *H.* 4 but in no other Kings time when the Lord Chancelor was preſent.

Upon what occaſions the cauſe of ſummons have been declared by the Lord chief Juſtice *tempore E.* 3. though the Chancellor were preſent.

Obſerve the occaſions to have bin offered when a Biſhop was Chancellor and the cauſe of ſummons was either touching Male factors

factors, or breach of the peace or the like, for then none of the Biſhops or the Clergy could (by Canon of the Church) be preſent. Or when it concerned the uſurpations of the Pope for *Ceaux paroles ne giſont nye enbouch de Prelate* ſaies the Record *An.* 51. *E.* 3.

Therefore in divers years of *E.* 3, the ſame hath been declared by the Lord chief Juſtice *prout An.* 6. E. 3 *lunæ poſt finem ſancti Georgij* departed out of the houſe when theſe matters which concerned the breach of peace were handled *An.* 6. *E.* 3. *veneris devant le Feſte ſanct Nicholai* by the Lord chief Juſtice *Jeffery le Scroop* concerning *Ireland* and the malice of the Rebels there, &c.

*An.* 6. *E.* 3. *Octabis ſancti Hilarii* by *Jefferie le Scroop* Lord chief Juſtice touching *Scotland* and the Marches.

*An.* 13. *E.* 3. *Quinden. Mich.* it is not recorded by whom the cauſe of ſummons was declared nor *Eodem An. Octabis ſancti Hilarii*, nor 14 *Ed* 3 in Lent, nor in the ſecond Parliament in that year nor 15 *E* 3. nor 20 *E.* 3. nor 25. *E.* 3 *Octabis purificationis Mariæ.*

*An.* 17. *E.* 3 the cauſe of ſummons touching *France* was begun by the Chancellor in general but purſued in particular by *Mons. Barthol. Burgherſh no.* 7. yet the Chancellor

was

was ſpeaker afterwards *n.* 10. Touching the better obſervation of the Laws of the Land, and againſt maintenance.

But the uſurpations of the Pope were treated *per Comites, Barones, et autres nobles, et toute Le Commo. vide* the petition for the ſtatute againſt proviſions; *&c. n.°* 6. The prelats are not named.

*Anno* 21. *E.* 3. *Cro Hillarii per Monſ William de Thorpe* touching the French Wars and how the peace may be kept at home.

*An.* 22. *E.* 3. by *Monſ. William de Thorpe* Chief Juſtice touching the Wars of France

*An.* 25. *E.* 3. *in Feſto Hilarii per Monſ. de Shareſhall* chief Juſtice touching the diſturbers of the peace, and maintainors of quarrels, *&c.* And alſo touching the Realm of *France*, the Kings Inheritance.

*Ann.* 27. *E.* 3. *At* a great Counſel *per William Shareſhall* touching the ſtaple.

*An.* 29. *E.* 3. *Cro. ſanct. Martini Monſ. William de* Shareſhall *Chr.* Chief Juſtice *dit que il pleiſt a Roy que la Cauſe de ſummons ſoit Monſtre per Monſ. Walter de Maumje* touching *France.*

*An.* 26 *E.* 3. *per Monſ. Henry de Green* chief Juſtice touching the libertie of the Church and the peace of the Land, &c. And

touching

touching *Scotland*, and to advance the ſmall price of Wool, *&c.*

*Anno* 37 *E.* 3. *Octab. Hillar.* Proclamation was made by the Kings commandment in *Weſtminſter* Hall, that all the Prelates, Lords and Commons who were come to the Parliament, ſhould draw themſelves to the painted Chamber; and afterwards on the ſame day there being in the ſaid Chamber the Chancellour, Treaſurer, and ſome of the Prelates, Lords and Commons, who were come to the Parliament, Sir *Henry Green* the Kings Chief Juſtice told them in Engliſh, that the King is ready to begin his Parliament, but that many of the Prelates, Lords, and Commons who are ſummoned are not yet come, wherefore the King willeth that they ſhould depart and take their eaſe untill Munday. On which day the cauſe of Summons was declared by the Biſhop of *Ely* then Chancellour, touching the liberties of the Church, and the grievances of the people.

Theſe are the Parliaments of *Ed.* 3. that mentioned the Chief Juſtice.

In all the ſubſequent Parliaments in his time, the cauſe of Summons was declared by the Chancellor, and he hath been Speaker.

Except that of 47 *Ed.* 3. The ſummons was declared by Sir *John Knevet* Chancel-

lor, and the next day by Sir *Guy Brian* more particularly; and that 15 *E.* 3. where the cauſe touching Modern Affairs was declared by the Biſhop of St. *David* the Chancellor, and the uſurpation of the Pope by Monſieur *Robert de Aſhton* the Kings Chamberlain.

Since *E.* 3. the Cauſe of Summons was ever declared by the Chancellor, if he were preſent, though the day after ſome other Matters have been opened unto the Lords and Commons, *prout* by the Steward of the Kings houſe.

*Anno* 2 *R.* 2. at *Glouceſter* & *Anno* 5 *R.* 2. by Sir *Hugh Segrave* the Kings Treaſurer, and *Anno* 6 *R*: 2: by the Biſhop of *Hereford*, &c.

The like hath been in latter times, *Anno* 21 *Jacobi*, by the Duke of *Buckingham* touching the Match with *Spain*, and the recovery of the *Palatinate*, &c.

*An*: 2 *H*: 4: The cauſe of ſummons was declared by Sir *William Thirving* Chief Juſtice of the Common Pleas.

Yet the Parliament buſineſſe was afterwards managed by the Chancellor not preſent the firſt day.

*Whether he that anciently declared the Cauſe*

*Cauſe of ſummons not being the Chancellour were* Speaker *alſo all the Parliament, though the Chancellour was preſent.*

Theſe ordinary matters are not entred uſually in the Rolls of *E.* 3. yet by ſome we may gueſs at the reſt.

Vide *Anno* 25 *E.* 3. the ſummons were declared by *William de Shareſhall* Chief Juſtice; and Receivers and Tryers of Petitions being read, he willed the Commons to put their advice in Writing, and deliver it to the King on Thurſday following: ſo that he was Speaker, and yet the Biſhop of *Wincheſter* was Chancellor, and preſent; for the Record ſayes, that he delivered the Lord of *Arundel's* Petition unto the Clerk to be entred, *N°* 8. *et* 9.

*Anno* 25 *E.* 3. *in feſto ſancti Hillarij*, Sir *William Shareſhall* Chief Iuſtice delivered the cauſe of Summons. *N°* 1. 6. and on Friday following willed them to deliver in their petitions *N°* 8. ſo he managed the *Parlam.* buſineſſe, and yet the Chancellor was preſent, for he is appointed to aſſiſt in the trying of Petitions, the cauſe of importance, *N°* 3, & 4.

And in all other Parliaments of *Edw.* 3.

when the Kings cauſe of Summons was declared by the Chief Juſtice, the Chancellor was then preſent as may appear by the Tryers of Petitions.

So that in thoſe Parliaments it cannot be ſaid that the Chief Juſtice did ſupply the Lord Chancellors place (for that is properly when he is abſent) but was appointed by the King to be Speaker that Parl.

*Anno* 29 *Ed.* 3. The Chief Juſtice declared that the Kings pleaſure was that the cauſe of Summons ſhould be declared by Monſieur *Walter de Mannye*, and ſo it was; Yet the Chief Juſtice managed the Parliament buſineſſe as Speaker. For preſently after Monſieur *Mannye* his diſcourſe, he called the Commons to adviſe thereof, *&c.* and make ready their petitions, *N°* 10.

And the petition of the Earl of *March* being read, it was ſaid by Monſieur *VVil: Shareſhall*, and the Lords then preſent, with one minde, and one accord, that it ſeemed to them, That the Petition was good and reaſonable to them, *&c. Ibid.* attet the Petitions of the Commons; here you ſee the Chief Juſtice, ranked firſt above the Lords in delivering of their Votes.

So that it is plain, the Chief Juſtice managed the Parliament buſineſſe as Speaker of

of the Parliament appointed by the King, and that he did execute, (not supply) the place of the Chancellor therein.

For in such cases where the Chancellors place is supplyed, there when the Chancellour comes, he executes his office himself.

*Pront An.* 31 *H.* 6. The Chancellor being absent (saith the Record) the K. commanded the Bishop of *Lincoln* to pronounce the cause of Summons, *N°* 1. 6. *March.*

But when the Chancellor was come, he prorogued the Parl. by the Kings commandment, *No:* 12. the 18. of *March.*

*Whether he that anciently declared the Cause of Summons (not being Chancellor) had any Commission (as now) under the seale or no.*

Here by the ancient Parliaments, I meane those whose Records be kept in the Tower.

*Anno* 6 *E.* 3. *Lunæ post fest. sanct. Gregorij*, the Chief Justice by the Kings commandment declared the cause of Summons, *&c.*

*No: An:* 21 *E.* 3. *Consimile* by the Kings commandment declared the cause of Summons, *&c. No.*

*Anno* 21 *E.* 3. *Lunæ poſt feſt ſancti Gregorij*, &c. *Conſimile* by the Kings commandment, which in my opinion is to be underſtood by a Verball commandment onely, and not by any commiſſion: For none is recorded in any of the Rolls in his time, which would have been in one Parliam. or other, whereas Commiſſions of far leſſe moment are entred.

In two Parliaments of *H.* 6. The Chancellors place was ſupplyed by a verball authority. *prout*

*Anno* 9 *H.* 6. the Chancellor being ſicke, unto whom it appertains (*Ratione officii ſui*) to pronounce the cauſe of Summons, the Duke of *Glouceſter* (the Kings protector) appointed Doctor *Lyndwood* to pronounce the ſame.

The 31 *H.* 6. the Chancellor being abſent, the King commanded the Biſhop of *Lincoln* to declare the cauſe of Summons There was then no Commiſſion granted to ſupply the Chancellors place as now of later times.

In the end of this Chapter ſhall be ſhewed when the firſt Commiſſion was granted, and precedents of the ſame all forms thereof.

*The*

*The manner how the Cauſe of Summons is declared, when the King is preſent in perſon, and how when his Majeſty is repreſented by Commiſſion.*

THe King is ever preſent when the cauſe of Summons is declared, either in perſon, or by Commiſſion: If in perſon, the Lord Chancellor doth firſt remove from his place, which is on the Kings right hand behind the Chair of State, and confers privately with his Majeſtie.

The cauſe of which Ceremony may ſeem to be this; that as none but the King can call the Parliam. ſo it may appear that none but his Majeſtie can propound and direct wherefore it is called.

And this Ceremony is ever obſerved by the Lord Chancellor, before he ſpeak any thing in Parliament when his Majeſty is preſent. As for the continuance, prorogation, or diſſolution of the Parliament, as they are not entred to be done (*Ex Mandato Domini Regis*) ſo they are not entred to be done *per le Roy*, whereby it ſeems this ceremony was obſerved alſo when the K. was preſent.

If the King be repreſented by Commiſſi-

on, then the Lord Chancellor ſits on the Woolſack. The Commiſſion being read, the Commiſſioners repair to the ſeat prepared for them, on the right ſide of the Chair of State beneath the ſteps, then the Lord Chancellor ariſeth and conferreth with the Commiſſioners, and returns to his place on the Woolſack, and there declares the cauſe of ſummons, *prout Anno* 28 *Eliz.* 29 *Oct.*

Vide *An*: 51 *Ed.* 3. The Prince of *Wales* repreſented the King in Parliament, and ſat in the Chair of State.

Here may be a queſtion, whether the Lord Chief Juſtice ſate *tempore E.* 3. when he declared the cauſe of ſummons: And where he that ſhould now ſupply the Lord Chancellors place, ought to ſit when he declares the ſame in the Kings preſence.

In my opinion he ought to ſit in his own proper place, untill he doth ariſe to confer with the King, and then to declare the ſame in the Lord Chancellors place, as he may be neer the King. It is not fit that he ſhould ſit or ſtand at the Woolſack, and ſpeak with his back to the King, but I have no precedent for it.

The

## *The Commiſſion to ſupply the Lord Chancellors place.*

*Elizabeth* by the grace of God, Queen of *England*, *France*, and *Ireland*, Defender of the Faith, &c. To Our truſty and wel-beloved Sir *Robert Catelyne*, Knight, Chief Juſtice of the *Pleas* to be holden before Us, greeting. Whereas our truſty and wel-beloved Councellor Sir *Nicholas Bacon* Knight, Lord Keeper of our great Seal of *England* is at this preſent ſo viſited with ſickneſſe that he is not able to come to the upper Houſe of this Our Parliament holden at *Weſtminſter*, nor there to ſupply the room and place in the ſaid Upper Houſe, among the Lords Spirituall and Temporal there aſſembled, as to the office of the Lord Chancellor or Lord Keeper of the great Seal of *England* hath been accuſtomed, We minding the ſame place and room to be ſupplyed in all things as appertaineth, have named & appointed you: And by theſe preſents do name, conſtitute, and appoint, and authorize you from day to day, and time to time hereafter during our pleaſure, to uſe and occupy the place and Room of the ſaid Lord Keeper

Keeper in our ſaid Upper Houſe of Parliament amongſt the ſaid Lords Spirituall and Temporal, there aſſembled, and there to do and execute in all things from day to day, and time to time, as the ſaid Lord Keeper of the great Seal of *England* ſhould, or might do, if he were there preſent, uſing, and ſupplying the ſame place; where We will and command you the ſaid Sir *Robert Catelyne*, to attend into, and about the Execution of the Premiſſes with effect: And theſe our Letters Patents ſhall be your ſufficient Warrant and Diſcharge for the ſame in every behalf. In witneſſe whereof we have cauſed theſe our Letters to be made Patents. Witneſſe our ſelfe at *Weſtminſter* the 25. of *October*, in the 8. year of our Reign.

*Marten.*

CHAP.

## CHAP. VII.

### *De Prolocutor. Domus Communis.*

### *The Commons ever had a Speaker.*

THAT the Commons have ever had a Speaker, I think none will doubt; they needed none in the ancient times when both Houſes ſate together: But I ſhewed in the third Chapter that the Commons ever had a Speaker for their conſultation apart from the Lords, though they did often meet and ſit together in one room, and then a Speaker was neceſſary, to avoyd confuſion of ſpeech and Arguments.

To reſolve this more clear, *Vide lib. ſacc. Albini, fol.* 207. in Sir *Robert Cotton's* Library. The anſwer of the Parliament, *An.* 44 *H.* 3. to Pope *Alexander* touching the recall of *Adomar* the Elect Biſhop of *Wincheſter* from baniſhment, *viz. Si Dom. Rex & Regni Majores hoc Volent, Comunitas tamen ipſius ingreſſum in Angliam jam nullatenus ſuſtineret*, which is ſigned and ſealed by all the Lords, and by *Petrus de Mounte-*

*forte*

*fort Vice totius Comitatus*; which ſhewes plainly that he was then Speaker: For the ſame words did Sir *John Tiptoff* their Speaker ſigne and ſeal to the Entayl of the Crown *Parl. An:* 7. *et* 8 *H.* 5.

There are ſome other Records, out of which one may gueſſe they had a Speaker; *prout Parl. An:* 13 *E.* 3. *N°* 9. *Les Chivalers des Countes & les Commons reſponderent per Monſieur William Truſſell*, who may be ſuppoſed to be their Speaker.

But the firſt that doth directly name him is the parliam. 51 *E.* 3. *N°* 87.

The laſt day of the Parliament (ſaith the Record) Sir *Thomas Hungerford*, Knight, Speaker, declared to the Lords that he had moved the King to pardon all ſuch as were unjuſtly convicted in the laſt Parliament: and that the King willed him to make ſpeciall Bills for them, which he had done for ſeven, *&c:*

It can be no Argument that the Commons had no Speaker before the 51 *E.* 3. becauſe no former Records mention him; for this is to be noted, that the antient Rolls did record onely what Acts paſſed between both Houſes, and what Laws were made, and omitted the Forme and Ceremonies then uſed.

There

There are divers Parliament Rolls of *R.* 2. that mention the ſpeaker in the beginning at this preſentment or proteſtation, or the like, and ever after he is omitted in the ſame Rolls, and all is entred to be ſpoken by the Commons not naming him at all: *prout Anno* 1 *R.* 2

*An.* 2 *R*, 2. *apud Glouceſter no.* 18. 20. 22. 23. 24. 26.

*An.* 4, *R*, 2. *No.* 10. 12, 13.

*An.* 5. *R.* 2. *no.* 10. 16.

*An* 21. *R.* 2. *no* 8. 9. 14. 15.

And the Parliament Rolls *Annis* 1. 2. 4. 5. 6. et 11. *H.* 4. do mention the *S*peakers proteſtation.

But whatſoever is ſpoken, or done as on the behalfe of the Commons is recorded to be done by the Commons, and the Speaker not once mentioned.

The like may be obſerved out of the Parliaments *An.* 2. *H.* 6 *no.* 6.

*An.* 4. *h.* 6. *no.* 10. *An.* 6. *h.* 6 *no.* 16. *Anno* 29. *h.* 6. *no.* 16. And *Anno* 12. *E.* 4. *no* 10. And *An.* 22 *E.* 4. *no* 10. *An.* 29. *h.* 6. *no* 16. *An.* 31. *h.* 6. *no.* 3. Which ſay that, that was ſpoken by the Commons, without doubt was ſpoken by the Speaker on their behalf.

Whereas in divers other Parliaments of

*R.* 2.

*R.* 2, and *h.* 4 and downewards to this day the partie that ſpeaks for the Commons is alwaies recorded (*viz*) the Speaker antiently, and the Meſſenger of later times,

And although the Parliament Rolls of 1. 2. 4. 5, 6. 17. 20. 21. years of *R.* 2. do mention the Speaker, and his ſolemn proteſtation is there made, and recorded; yet there be divers other Parliament Rolls: *R*, 2. wherein the Speaker is not once named at all (*viz*) *An.* 5. *R.* 2. the 7 *Maii An.* 6 *R.* 2 the of—*Octabis Mich.* and *Annis* 9. 10. 11. 13, 14, 16, and 18 *R.* 2. So that I do not marveil that the Records of *E.* 3 (which are the firſt Parliament Rolls now extant) do not mention the Speaker, and therefore, I may boldly affirm, that the Commons had their Speaker aſwell in the times of *R.* 2. when it is apparent they had a *S*peaker though not mentioned in the Rolls (*viz*) in all the Parliaments between the 16. and the 17. *R.* 2.

## The Election of the Speaker.

AT this day the cauſe of ſummons being declared, if by the K. (who in this learned age, hath ever delivered the ſame to the great admiration of the hearers) The Lord Chancellor confers firſt with his Majeſtie and

and then in his name commands the Commons to aſſemble in their houſe, and to chooſe one of their Members to be their Speaker, and to preſent him to his Majeſtie on a day certain.

If the cauſe of ſummons be delivered by the Lord Chancellor or by any other whom the King appointed, he concludes his ſpeech with the Kings commandement to the Commons to chuſe their Speaker, without removing from his place to confer firſt with his Majeſtie, or with the Commiſſioners if the King be abſent

The Commons being thereupon aſſembled in their houſe, one of the Commons putteth the reſt in mind of their charge given in the upper houſe, touching the chuſing of a Speaker, And then doth of himſelf commend one unto them, and deſireth their opinions to be ſignified by their affirmative or negative voices: And if any man ſtand up and ſpeak againſt him ſo named alledging ſome reaſon, he ought to name another:

When it appeareth who is choſen, after a good pauſe he ſtandeth up and ſheweth what abilities are required in the ſpeaker, and that there are divers amongſt them well furniſhed with ſuch qualities, &c. diſableth himſelf, and prayeth a new choice to be made

which

which is commonly answered with a full consent of voices upon his name.

After which two go unto him in the place where he sits, take him by the Arms, and lead him to the *C*hair, after a while he riseth and uncovered, with humble thanks for their good opinion of him, promiseth his willing endeavour to do them service, &c.

Then some one commonly (he that first spake) puts them in mind of the day to present him, &c.

The mace is not carryed before him, until his retorn, being presented to the King and allowed of.

Here may be 2 questions moved.

1. Whether the *C*ommons might chuse their Speaker if the King commands them not.

2. Whether the election be in their own absolute choice.

For to clear these two we might view the ancient Records, those of *R.* 2 are the first that mention their Speaker.

It doth not appear by any of them, that the *C*ommons had ever had any such commandement to chuse their Speaker, neither a Word of it in any Record of *E*, 3 which have the speeches at large touching the cause of summons, most of them concluding with

a charge of the Commons to consider and advise thereof amongst themselves, but nothing touching the Election of their Speaker.

Yet out of doubt they did first choose their Speaker, before they entred into any debate of charge.

The first charge to choose their Speaker, is in *Anno* 2: *Henry* 4. but that onely excepted, it is continued from 2 *Henry* 4. untill this day, and the long use hath made it so material, that without the Kings Commandement or leave, they cannot choose their Speaker, which appears plainly by this, that in *Anno* 31. *H.* 6. the Parliament being prorogued, and the Speaker arrested in execution in the *interim* before the access, The Commons prayed his inlargement, which after long debatement of the priviledges of Parliament was denyed, and then certain of the Lords were sent to the Commons, and commanded them in the Kings Name to choose a new Speaker, and thereupon they did so.

And of late years, in the time of Queen *Elizabeth*, the Parliament being prorogued, and the Speaker dead in the *interim*, before the accesse, the Commons before they proceeded to any businesse, acquainted the Lords therewith, and desired the Lords to intimate

to the Queen, (as ſhall be more largely declared hereafter in this Chapter) and ſo were commanded by her Majeſty to chooſe a new Speaker.

(2) But as touching the ſecond Queſtion, ſurely the Election of the *Speaker* was anciently free to the Commons, to chooſe whom they would of their own Houſe, which appears in this, that the King never rejected any whom they made choice of.

*Vide* 5. *R.* 2. the Parliament began the 4th. of *November*, and the xxviijth. of *November* the Commons came and preſented *Sir Richard Walgrave*, whom they had choſen for their *Speaker*, who excuſeth himſelf, deſiring to be diſcharged. But the King (*luy Chargeaſt del' faire per ſa legiantie*) in as much as his companions had choſen him, *N°*: 9.

Whereby it appears plainly that the choice was abſolutely in their own power.

## The Preſentment of the *SPEAKER.*

AT the Day appointed, his Majeſty ſitting in his Royal Throne, and the Lords all in their Robes.

The

The Commons are called in, who being come, the *S*peaker is brought between two of them, with low obeiſances to the Barr, and ſo preſented at the Barr unto his Majeſty: The preſentment of the *S*peaker is not recorded in any of the Rolles of *E.* 3.

And none of *R.* 2. ſpeaks of the Kings Commandement to chooſe their *S*peaker, ſo that there could not be any day appointed to preſent him: yet I ſuppoſe the Commons did ever firſt preſent their *S*peaker, before they declared any thing to the King, otherwiſe what needed the Speakers excuſe unto the King, before he was admitted to ſpeak in the firſt year of *R.* 2. which no Record ſaies was a new Inſtitution, and therefore no doubt was in uſe alſo under *Edward* the third, and before.

From the ſecond year of *Hen.* 4th. and downwards, the Commons are willed to chooſe their Speaker, and to preſent him.

## The Speakers Excuſe.

THis is now formal and out of modeſty, for he firſt excuſeth himſelf unto the Commons when they elect him, and afterwards to the King when he is preſent.

The firſt excuſe that I find is that of Sir

*Richard Walgrave* Knight, *Speaker*, *Anno* 5. *R.* 2.

Whom the King charged upon his Allegiance to take it upon himſelf, he was choſen by the Commons.

The next is *Anno* 1. *Henry* 4. of *Sir John Chenye*, who made no excuſe at his preſentment: But the next day after he and they came before the King, and declared his diſability to ſerve by reaſon of a ſudden diſeaſe: And that the Commons had choſen *Sir John Dorewood* in his place, beſeeching his Majeſty to allow thereof, which the King did, and commanded *Sir John Dorewood* to be their *Speaker*, and he made the common proteſtation for himſelf, and the Commons, but no excuſe *no* 63.

The next excuſe is *Anno* 5. *H.* 4. *N°*: 8. of Sir *Arnold Savage*, which the King would not allow of.

*Anno* 6: *H*: 4: *N°*: 8: *Sir William Sturmy* made no excuſe.

*An.* 7: & 8. *H*: 4: *N°*: 9. *Sir John Tiptoft* deſired to be excuſed in reſpect of his youth, But the King affirmed the Election.

And all other *Speakers* in *Hen*: 4: his time, deſired to be excuſed, and ſome under *H*: 5: and ſome others did not; it was not conſtantly obſerved, but from the 6th: year of *Henry* 6.

*Henry* 6: ſince which time they have all (except two) deſired to be excuſed: yet none were excuſed ſave onely Sir *John Popham* Knight, *Anno* xxviij. *H*: 6: whom the King diſcharged, and thereupon the Commons choſe, and preſented *William Threſham* Eſq; who made no excuſe, neither did Sir *William Oldhall*, *Anno* xxix. *H*: 6: deſire to be excuſed.

At this day, the Speaker having made his excuſe, the Lord Chancellor confers with the King, and then telleth him that his Majeſty doth approve the Commons choice, and will not allow of his excuſe.

Then the Speaker proceeded to his ſpeech, but anciently he made firſt a proteſtation as followeth.

## The *SPEAKERS* Proteſtation.

THe firſt Proteſtation is that of 1 *R*: 2: *No*: 15. yet no doubt the like was made in former times, though not entred; For I find no new Inſtitution, or Order for this, neither could it be new, being in the beginning of the firſt Parliament of this young King.

The words of the Proteſtation are theſe, (*viz.*) That what he was to ſay was from the whole Houſe, and therefore required that if he ſhould happily ſpeak any thing without their conſents, that the ſame might be amended before his departure from the ſame place, *N°*: 15.

*Anno* 7: *H*:4: *N°*:9: Sir *John Tiptoft* was preſented and affirmed by the King, his excuſe by reaſon of his youth being firſt recited, this was the ſecond of *March*; on the xxviijth. day of *March*, he made the common Proteſtation, it ſhould ſeem he was in good hope to be excuſed: And therefore he was unprovided of a Proteſtation, which he made not untill he had ſomewhat elſe to ſpeak on the behalf of the Commons, and deſired a confirmation of their priviledges: on the ſecond of *Aprill*, he deſired his Proteſtation to be entred, and deſired alſo in the name of the Commons, that if they ſhall deliver any thing in writing, the ſame writing may be delivered to them again, at any time during the Parliament, to be amended if need be at their pleaſure, unto which the King aſſented.

At this day the Speaker wholly omits the Proteſtation, neither is it now needfull, for he never comes to ſpeak on the behalf of the Commons

Commons, unleſſe to demand Judgement againſt any whom they have accuſed to the Lords.

## His Spake ancient at this day.

ANciently the Speaker came not before the King, untill he had ſomewhat to ſay unto his Majeſty, on the behalf of the Commons, and then having firſt made his proteſtation for amendment of any thing he ſhould ſpeak otherwiſe then he was directed: He proceeded to ſpake in the name of the Commons, and if he ſpeak any thing of his own mind, as ſometimes it hapned, he declared it ſo, but never made any Oration, as now of latter times.

To prove all this, *Vide* all the Parliaments of *R*:2: where the Speakers Proteſtation is firſt made.

*Anno* 1: *R*:2: His ſpeech followes his Proteſtation, but it concernes not the cauſe of Summons, but matters *dehors*, ſo that it ſeemes he was directed therein by the Commons.

*Anno* 2. *R.* 2. he rehearſeth the Chancellors ſpeech, and anſwers in the Name of the Commons, which ſhewes plainly the Com-

mons direction for his ſpeech.

*Anno* 3. *R.* 2. he delivers the anſwer of the Commons touching the aid required.

*Anno* 6. *R.* 2. The Commons debated two days amongſt themſelves, of their charge touching the Kings paſſage into *Flanders*, then they deſired conference with the Lords, after conſultation had, the *S*peaker came, and made his Proteſtation, and then delivered the Anſwer of the Commons, ſo that the *S*peaker came not untill the Commons had agreed what he ſhould ſay. And no Record *Ed.* 3. mentioned either the ſpeakers preſentment or proteſtation, But the anſwer of the Commons when they were agreed thereon; though out of doubt the ſame was delivered by the Speaker onely.

Afterwards, *Anno* xvij. *R.* 2. For between the 6th. and the 17. No Speaker is Recorded.

The Speakers preſentment and proteſtation are onely entred, and no ſpeech the firſt day, *Anno* xx. & xxi. *Conſimile.*

And ſo in very many Parliaments of *H.* 4. 5 and *H.* 6. and *E.* 4. and downwards to the 6. *H.* 8.

Which Proteſtation the Commons alſo directed, as may appear *Anno* xiij. *H.* 4. where the Speaker required on the behalf of the

Commons

Commons, that it would pleaſe the King, that they might be adviſed of their Proteſtations; untill the next day; which plainly ſhewes, That the Speaker ſpake nothing (his excuſe excepted) but what the Commons adviſed him.

*Vide etiam Anno* 2. *H.* 4. the Speakers proteſtation being allowed, he then of his own authority (ſaith the Record) rehearſed the cauſe of Summons.

So that if he made any ſpeech of his own he declared it ſo.

Of latter times, the *S*peakers ſpeech is what it pleaſeth himſelf, having no direction at all from the *C*ommons touching the ſame; Neither do now omit their ancient proteſtation, and in lieu thereof, make Petition to the King on the behalf of the *C*ommons, ſome in generall words, for all their ancient words, and ſome in particular.

1. For acceſs unto his Majeſty.
2. For freedom of ſpeech.
3. And for freedom from Arreſts.

And they did ever enjoy theſe priviledges in as ample manner as now, though not formerly prayed by the *S*peaker.

I have entred this laſt *S*peakers ſpeech, *Sr Thomas Crew* at large, in the Journal xxi. *Jacobi*

*Jacobi Rs.* which in his opinion is the beſt that is Recorded ſince the 6. of *H.*8. it conſiſts not in verball praiſes, but in real, fit for the time, and well beſeeming the dignity of a Parliament.

The Speaker having ended his Oration, wherein he alwayes makes ſome requeſts on the behalf of the Commons: The Lord Chancellor confers again with the King, & makes anſwer thereunto in his Majeſties name, granting his requeſts for acceſs to his Majeſty, and for their Liberty and Priviledges in as ample manner, as they have enjoyed them in any time of his Majeſties Progenitors.

That the Commons ever enjoyed thoſe priviledges, which the Speaker now petitions for, though never deſired by any of the Ancient Speakers, untill after the 7th. year of King *H.*8.

The Petitions are now three, touching their Priviledges, (*viz.*)

1. Firſt, For acceſs unto his Majeſty.
2. Secondly, For freedom of ſpeech.
3. Tirdly, For freedom from Arreſts.

As touching acceſs unto his Majeſty, it appeareth plainly they ever enjoyed this, ever when the Kings were abſent from Parliament, *prout Anno* 51. *E.*3. The King being then ſick at *Eltham*: The Speaker, *Sir Thomas*

*Thomas Hungerford* declared to the Lords, that he had moved the King to pardon all such as were unjustly committed in the last Parliament, *&c. N°*: 87.

That the King was then sick at *Eltham*, *Vide N°*: xxij.

At all other times of *R.* 2. *Hen.* 4. and downwards, the Commons with the Speaker were admitted into the Kings presence in Parliament, to deliver their answers: And oftentimes under *R.* 2. *H.* 4. and *H.* 6. they did propound matters to the King, which were not given them in charge to treat of.

This request for access unto his Majesty, is first Recorded, *Anno* xxviij. *H.* 8. to be made by *Richard Riche* then Speaker.

Then by *Thomas Moyle* Speaker, *Anno* xxi. *H* 8. And afterwards by all others whose speeches are in the Journalls.

The Speakers Petition for freedom of speech is not recorded, before the 33. *H.* 8. made by *Thomas Moyle* Speaker.

Neither was it ever denyed them, for the Commons would never suffer any uncomely speeches to pass of private men in their House, much lesse of the King, or of any of the Lords.

They did oftentimes under *E.* 3. discuss and debate amongst themselves many things concerning the Kings Prerogative. And

And agreed upon Petitions for Laws to be made directly againſt his Prerogative, As may appear by divers of the ſaid Petitions, yet they were never interrupted in their conſultations, nor received Check for the ſame, as may appear alſo by the anſwers of the ſaid Petitions.

Theſe Precedents of *E.* 3. (are the beſt,) he being the right Heir to the Crown, abſolute in his government, and welbeloved of his people, and may be freely cited.

*R.* 2. ſucceeded, being very young, having froward Unkles, who were ſo popular that they made him very jealous of his Prerogative.

I will not alledge ſuch precedents of his time, as prove that the Commons argued and propounded matters contrary to his Prerogative. (for they are many) But onely obſerve how that King did in the latter end of his reign, take notice of the Commons conſultations in matters concerning the ſame.

The firſt happened in the Parliament, *An.* xx. *R.* 2. when the King had maſtered his Unckles, and became abſolute.

In this Parliament *Sir John Buſſie*, one of the Kings Minions being *S*peaker, a Bill was exhibited to the Commons, that the great

reat & exceſſive charge of the Kings Houſe e amended and taken away, and againſt the ultitude of Biſhops, and Ladies in the Kings Houſe.

No man will doubt but that *Buſſie* did preſently acquaint the King with this, and it was bruited alſo at that very time, that the King was diſpleaſed with the Commons, for that they intended to diſſwade his Majeſty from ſending certain into *Lumbardy*, whereupon the Commons came before the King, and denyed there was any ſuch ſpeech amongſt them: And yet (though this occaſion was offered by themſelves) the K. took no notice of the Bill touching his Houſe, but willed the Lord Chancellor to tell them, that his Officers ſhould come and confer with them about weighty affairs.

At the Lords return from this conference, the King came into the Parliament Houſe, and told the Lords that he underſtood that the Commons had (in this conference) handled ſome matters againſt his Royall Eſtate and Liberty, and commanded the Lord Chancellor to declare the ſame.

Whereupon the Lord Chancellor declared Four Bills, propounded by the Commons, whereof the fourth and laſt was the Bills touching the exceſſive charge of the Kings

Kings Houſe, *&c.* which onely diſpleaſe his Majeſty, and he was highly offende that the Commons who are his ſubjects dur preſume of any Ordinance, or governmen of the Kings Houſe and Perſon, which he commanded the Lords to tell the Commons, and to charge the Speaker to declare his name, that exhibited the Bill: And *Haxey* was condemned for a Traytor for that Bill.

By this you may ſee how the K. did caſt about, to have this matter related unto him in the upper houſe, neither can it appear by any ancient Record, that the King did take notice of any of the Commons ſpeeches, or conſultations, until they were reported unto his Majeſty in open parliament.

The next precedents are of 1 *H.*4. which are not much to be ſtood upon, becauſe he was an Uſurper: And therefore it behoved him to affect the love of his Commons in his time: *Annis* 7. *&* 8. The Speaker told him plainly in open parliament, that his Houſe was far more chargeable, but leſs honourable then any of his Progenitors, and it was well taken by the King, whereas *Haxey* was condemned for a Traytor, for a leſſe matter then under *R.*2. yet ſome precedents of his time do plainly prove the ancient priviledges

ledges of the Commons: And therefore I will recite those Laws onely.

*Anno* 2. *H.*4. *N°*: 11. The Commons petitioned the King, that he would not suffer any Report to be made unto him of any matter either moved, or debated amongst them untill they be concluded, nor give them any credit, whereunto the King assented.

*Anno* 9. *H.*4. *N°*: 12. It is plain that the King is not to be tould of any thing in communication with the Commons, until it be declared by themselves, which was declared to be so upon this occasion: The Lords sent for certain of the Commons, and tould them what Subsidy they thought fit to give the King, and wished them to tell it their Companions, and to advise them to yield thereunto; unto which the Commons did justly take exceptions, and made complaint thereof unto his Majesty, and thereupon it was declared and agreed, that it is lawfull for the Lords to commune of the Subsidies by themselves: But neither the Lords nor the Commons are to make report thereof unto the King before they agreed: And then the same is to be declared by the Speaker in the manner accustomed. *Vide Chartam de immediat. in Schedula ibidem*, If the King might

not

not take notice of the Subsidy (about which the Lords and Commons did often confer and being agreed, made an Indenture thereof; much less might any thing else moved amongst the Commons be reported unto his Majesty, before the Commons were fully agreed thereon, and declared the same by their Speaker, or otherwise, either unto the King or Lords.

The third Petition is for freedom from Arrests.

This Petition was never made untill of late dayes, yet this priviledge did ever belong to the Lords and Commons, and to their servants also coming to the Parliament, staying there, and returning home.

*Anno* xviij°: *Ed.* i°: *Bogo de Clare*, and the Prior of *Holy Trinity* in *London* were complained of, for that the said Prior (by procurement of the said *Bogo*) had cited the Earl of *Cornewall* in *Westminster Hall*, in Parliament time to appear before the Lord Arch Bishop of *Canterbury*, *&c.* whereupon they were sent for (*ad respondendum Domino Regi, & Petro de Chamen Seneschallo Regis Walter. de Fane Court Mareschallo Regis, Domino Edward. Comiti Cornubiæ & Abb. de Westminst*: (*eo quod dicta Aula est infra libertates Domini Abbat*: They appeared

ed and submitted themselves to the King, whereupon they were sent to the Tower of *London*, (*Postea venit predictus Bogo & fin. fecit, Domino Regi pro predicta transgressione per duas Mille Marcas libras pro transgressione sibi facta, &c. Vide Placita Parliamenti Anno* xviij. *E.* 1. in an old Manuscript in the Tower, and in the Plea Rolles in that year also, there is a Petition of the Master of the Temple, to have leave to distrain for the Rent of a House in *London*, (held of him by the Bishop of St. *Davye*, for that he could not distrain *Tempore Parliamenti*. The answer is, *Non videtur honestum quod Rex concedat, &c. Tempore Parliamenti, sed alio tempore distringat, &c.* And *E.* 2. sent his Proclamation to the Justices of Assize, *quod supersedeant ubi Barones & alii Summoniti Ad Parliamentum Regis sunt præsentes, Vide* Clause *Anno* 7. *E.* 2. *Membr.* 28. *& Annis* 8. *E.* 2. *Membr.* xxviij. *& Annis* viij. *& E.* 2. *Membr.* xxij. *&* xxiij.

But these Precedents prove the priviledges of the Lords jonely, the next shall of the Commons also, and their servants.

*Anno* 5. *H.* 4. *N°*: 7. *inter Petitiones Communium* (viz. ) *Item pray* the Commons, that whereas according to the Custom of the

the Realm, the Lords, Knights, Citizens, and Burgeſſes, coming to your Parliament at your command, ſtaying there, and returning to their Countries, and their men, and their ſervants with them in the ſaid Parliament, under your ſpecial protection and defence, and ought not for any debate, treſpaſs, or other contract whatſoever, to be arreſted, or any way impriſoned in the mean time; and now ſo it is that many ſuch men coming to your Parliament, and others their men, and ſervants during the ſaid Parliament, have been arreſted by them, who had full knowledge that they ſo arreſted were of the Parliament as aforeſaid, In contempt of your Majeſtie, great damage of the party, & delay of the buſineſs of the Parliament: May it pleaſe you to eſtabliſh, That if any hereafter do arreſt any ſuch man coming to your Parliament as aforeſaid, or any of their men, or ſervants remaining with them in the ſaid Parliament, or any thing attempt contrary to the Cuſtom,

He ſhall make fine and ranſome unto you, and render treble damages to the party grieved, *R. 2.* as ſufficient remedy in the like Caſe. I have tranſlated this Petition, or Bill exhibited by the Commons, *Ad verbum*, out

out of the Original: By this you see who are privileged (*viz.*) The Lords, Knights, Citizens, and Burgesses, and their servants coming to Parliament, staying and returning.

The Petition is to have the contemners of this Priviledge punished by Fine and Ransome to the King, and treble damages to the party grieved, had sufficient Remedie.

What Remedy this was doth appear by the Earl of *Cornewalls* case, *Anno* xviij. *Ed.* iij. (*viz.*) that the party contemning the priviledge of Parliament is to be committed to prison, to make Fine and Ransome to the King, to render to the party grieved damages; as the Lords of the Parliament shall award; And to answer the Kings Steward and Marshall, if the contempt be committed within the Verge, for the wrong done to them, which is a greater punishment then the Commons required; And happily they know it not.

But this being the ancient Custom, and done by Prescription, The Lords thought it more honourable to retain it, then to Enact a new Law to punish the contempters of their priviledges, as if they had not been other

wiſe able to do it of themſelves, or had no Remedy before, but were ſubject to ſcorn and contempt.

As the offender was puniſhed, ſo the parſy arreſted was ſet at liberty, And this was to notorious, that the Commons (at that time) deſired no redreſſe therein by their Petition.

It reſts to ſhew how the party ſo arreſted, was ſet at Liberty, which ſhall follow: But here firſt occurrs another Petition of the Commons, touching aſſaults during the Parliament, (*viz.*)

*Eodem Anno* 5 *H.*4 *N°.*78. *Item* pray the Commons, that whereas all Lords, Knights, Citizens, and Burgeſſes, and their ſervants comming to Parliament by the Kings VVrit, in coming, ſtaying, and retourning, are under your protection royall, and many miſchiefs and Impeachments do often happen unto the ſaid Lords, Knights, Citizens, and Burgeſſes, and their menial ſervants at thoſe times, As by Murther, Maimes, and Batteries, by people lying in waite, or otherwiſe, for which due remedy is not yet provided: And namely and particularly in this preſent Parliament: An horrible Battery, and miſchief is committed upon *Richard Cheddar Eſquire*, who is come to this Parliament with

with Sir *Thomas Brooke* Knight one of the Knights for the Countie of *Somerſet*, and meniall wi h him, by *John Sallage*, otherwiſe called *John Savage*, whereby the ſaid *Richard Cheddar* is Emblemiſhed and maymed even to the peril of death. That it would pleaſe you to ordain upon this matter ſufficient remedy; and for other ſuch cauſes ſemblable ſo as the puniſhment of him may give Example, and terror unto others to commit the like miſchief in time to come; (that is to ſay) if any man ſhall kill, or murther any that is come under your protection to Parliament, that it be adjudged Treaſon, and if any do maim, or diſfigure any ſuch coming under your protection that he looſe his hand, and that if any do aſſault or beat any ſuch ſo come, that he be impriſoned for a year, and make fine and ranſome, to the King: And that it would pleaſe you of your ſpecial grace hereafter to abſtain from charters of pardon in ſuch caſes unleſs that the parties be fully agreed.

*R*°. For that the deed was done within the time of this parliament, let a proclamation be made where the deed was done, that the ſaid *John Sallage* appear, and render himſelf into the Kings Bench within a quarter of a yeare after the proclamation made

And if he doth not, let the ſaid *John Sallage* be attainted of the ſaid deed, and pay unto the partie endamaged his double damages, to be taxed by the diſcretion of the Iudges of the ſaid Bench for the time being, or by inqueſt if need be, and make Fine and Ranſome at the Kings Will, and ſo likewiſe let it be done in time to come in like caſes.

Thus far the petition of the Commons with the anſwer *vide* the printed book how the ſtatute is drawn up, upon this petition and anſwer, *et vide Rot. Clauſ.* (*An: eodem conſtat*) that the ſaid *John Sallage* did yeeld himſelf according to the proclamation.

This petition and anſwer may be compared to the former (*viz*) that the Lords would not diſcedere from the remedy dueanciently by preſcription, which they had for aſſaults as well as for arreſts, only they agreed to the Commons herein to provide for him that could not be apprehended after the fact done.

*An.*23.*H.*6.N°. 41.*inter petitiones communium*, the Commons pray that every perſon being of the Lords houſe, or of the houſe of Commons, having any aſſault or affray made upon them at the Parliament, or coming or going from thence, may have the like remedy therefore as Sir *Thomas Lar* had.

*Ro.*

*Rº.* The ſtatutes therefore made ſhall be obſerved; it ſhould ſeem the Commons had forgotten the ſtatute made 5 *h.* 4.

*Concerning a Committement of a Peer of this Realm in the time of Parliament.*

THE Earl of *Arundels* caſe in a Parliament of the 6th of *February An.* 1 *Caroli Regis* will fully ſatisfie this point and therefore I will add it here at large.

The 14. of *March An.* 1525. The Earl of *Arundel* being committed by the King to the Tower of *London*, ſitting, the Parliament Houſe was moved to take the ſame into their conſideration, and ſo to proceed therein as they might give no juſt offence unto his Majeſtie, and yet preſerve the priviledges of Parliament.

The Lord Keeper of the great Seal thereupon ſignified to the houſe that he was commanded to deliver this meſſage from his Majeſtie unto their Lordſhips (*viz*) that the Earl of *Arundel* was reſtrained for a miſdemeanor, which was perſonal to his Majeſtie, and lay in the proper knowledge of his Majeſtie, and had no relation to matters of Parliament.

Whereupon the house was put to a Committee, and being resumed, the Lords Committees for priviledges &c. were appointed to search for precedents concerning the Commitment. And the Lord chief Justice, Mr. *Justice Dodderidge*, and Mr. *Justice Yelverton* were appointed to attend their Lordships:

To meet when they please, and to report when they were ready for it, and their Lordships think fit, for the consideration of the house.

The 25 of *March* 1625 the Lord Treasurer delivered a message from the King in *hæc verba (viz.)*

Whereas by a motion made by one of your Lordships, the *Priviledges*

*Privileges.* Lord Keeper did yesterday deliver a message from his Majestie, that the Earl of *Arundel* was restrayned for a misdemeanor which was personal to his Majestie, and lay in the proper knowledge of his Majestie, and had no relation to matters of Parliament: his Majestie hath now commanded me to signifie to your Lordships that he doth avow the message in sort as it was delivered to have been done punctually according to his Majesties own direction: And he knoweth that he hath therein done justly and not diminished

d the priviledge of that houſe.

And becauſe the Committe appointed yeſterday to ſearch for precedents &c. had not yet made any report to the houſe, therefore the action of this buſineſs was ſuſpended for this time.

The 5. of *April* the Earl of *Hartford* made this report to the houſe (*viz*) the Lords Committees for priviledges met on Munday laſt: *Earl of Hartfords Report*

The firſt queſtion that did ariſe amongſt them was whether that proxies are of any validity which are deputed to any Peere who ſitteth not in Parliament himſelf, and it was conceived that thoſe votes were loſt; whereupon the Committee found this truſt to be deprived of five ſuffrages, by the abſence of the Earl of *Arundel* unto whom they were entruſted, and the Committee finding by the Journal book that the Sub-committee (which was appointed to ſearch for Precedents for priviledges concerning the Committment of a Peer in time of Parliament had not yet made report to this houſe, they therefore conferring their notes of precedents together wherof they had made ſearch they have found no one Peer to have been committed (the Parliament ſitting) without tryal, or judgment of Peers of Parliament; and

and that one only precedent of the Biſhop of *Winchester*, in the book Caſe of King *E.* 3. which was here urged cannot be proved to be in Parliament time: and this the *Lords* of the grand Committee thought fit to offer to the conſideration of the Houſe

*Order* Hereupon the Houſe was moved to give power to the *Lords* ſub-Committees for priviledges, &c. to proceed in the ſearch of precedents of the Committment of a *Peer* of this Realm during the time of Parliament: and that the Kings Councel might ſhew them ſuch precedents as they have of the committment of a *Peere* during the time of Parliament. And that the ſaid ſub-Committee may make their report unto the Houſe at the next acceſs.

All which was granted and agreed unto and theſe *Lords* were added unto the ſaid Committee (*viz*)

The *Lord* Treaſurer
The *Lord* Preſident
The Duke of *Buckingham*
The Earl of *Dorſet*
The Earl of *Devon*
The arl of *Clare*
The viſcount *Wallingford*
The *Lord North*
The Viſcount *Mansfield.*

The

The Kings Councel are appointed to attend the *Lords*, they or any five of the said Sub-Committee to meet on thursday in the *after* weeke, at two of the clock in the painted Chamber and afterwards when they please.

The 18 of *Apr.* 1626 The Lord president reported the proceedings of the Lords Subcommittees for priviledges, &c. upon the Commitment of the Earl of *Arundel* (viz) that the Kings Councel had searched, & acquainted the said Lords Sub-Committees withall that they had found in Records, Chronicles, and stories concerning this matter, unto which the said Lords Sub-Committees had given full answer and also shewed such Precedents as did maintain their own rights, all which followeth in *hæc verba*, &c (*viz*)

*Reports of the subcommittees for priviledges.*

*Touching Imprisonment or restraint of Lords in time of Parliament.*

VNder *E.* 1. the priviledges of the Lords of Parliament was such that although the power of the Church was so great that it pretended to be scarce less then the highest temporal power, yet when *Edward* Duke of Cornwall in Parliament time was by it cited by a process from the Arch-Bishop of *Can-*

*Canterburie* which was far less then any imprisonment he recovered 1000 marks Damages against *Bogo de Clare*, that procured the citation, and both this *Bogo* and the pryor of *Sanct. Trinity* that served it, were fined in great sums to the King for the contempt also against him in the citation.

The Case of the Arch Bishop *Stafford*, in the 15 *E.* 3 is observable here, it appears that though he were commanded to stay from the Parliament untill he had answered certain Articles in the Exchequer touching accompt, yet by a dutifull standing on his right, he did get his place in the House; and so sensible were the Lords of that breach of their priviledge in that restraint of this Arch-Bishop, that they declared that none of them ought to be questioned but in Parliament, and to that purpose also an Act passed that year, though with the rest of that year it now stands repealed.

Between the Parliaments of 50 and 51 *E.* 3. *William Wickham* Bishop of *Winton* was called to an account for divers monys that he had received of the King, and some other matter, and his temporallities were seised, and by command of *John* Duke of *Lancaster* in the Kings name he was not to come neer the King by twenty Miles: This was in

*Mi-*

Michaelmas Term 50. E. 3. in *Hillarii* 51 Parliament was held where the Bishops and the Clergy that then were a third state of the Parliament (as they are called frequently in the ancient time) being present to give the King a supply, made their complaint to the Arch Bishop of *Canterburie* as the chief of them (*de injuria illata eorum confratri et Carper. Domino Episc Winton, et quomodo non solum sibi met sed omnibus illis est et toti libertati Ecclesia derogatum, unde constanter asseruerunt se de instantibus Negotiis nullatenus effectualiter tractaturos donec quoad uniantur singula Cleric. membra; affirmant revereri instant negotium dum cum illis communicetur tangere, et quod omnes tangeret debere ab omnibus approbari.*) And although the Arch-Bishop willing to have declined the medling with their suite, (being on the Dukes partie) yet he was so far urged by them that at length he sent for him to come and take his place amongst them, as he did also; notwithstanding no writ of Summons appears to have bin sent to him by that Parliament, the presence of all the Lords was thought by the house of Commons to be so necessary, and a matter wherein they had such interest, that they desired that all the Lords that were absent might be sent for: But it was answered that

it

it would be too long a delay of the Par
ament, but such as were neere should
sent for: The Lord *Grey* of *Ruthin* bei
imprisoned by *Owen Glendor* of *Wales*, t
Commons conceived they had so much int
rest in the presence of every Lord ther
that they petitioned the King to give t
Lords of *Roose*, and *Villoghby* leave to pr
vide his ransome which was 10000 Mar
which was granted.

A bill passed both the houses in the
*h.* 4. wherein it is affirmed that according
the Custom of the Realm the Lords, Knight
Citizens, and Burgesses and their servant
coming to the Parliament and there staying
and retourning home again, ought not to b
arrested or in any manner imprisoned in th
ean time for any debt, accounts, trespass, o
other contract whatsoever. It was desire
that if any did offend against the priviledge
he should suffer fine and ransom, and pay
treble damages: But the Kings Answer is tha
they had sufficient remedy in *le cas*, for there
was no doubt made of the Priviledge though
a desire were of a greater Remedy then the
law had yet provided:

The Commons the 8 *h.* 6. in their bill for
*Lark* a servant of Mr. *Milred* a Burgesse
of Parliament (which passed both houses of

Par

Parliament) affirm that the priviledges of Parliament were cleere that no Member was to be arrested in Parliament time, But for Treason, Felony, or surety of the peace.

It was resolved upon great advice, 31. *H.* 6. that no member was to be arrested, saving in cases of Treason, Felony, breach of the Peace, or upon a condemnation had before the Parliament, which (as the Law is to this day) must be understood of an arrest of a Commoner, upon an execution before his time of priviledge in Parliament: in the xxxiij *H.* 8. The King himself in his speech touching *Ferrers* Case (that being a Burgess was taken in Execution) but discharged by Order of the Commons House) saies, that his learned Council had enformed him, that all Acts and Proceise, coming out of any other inferiour Courts, must for the time cease and give place to the Parliament, as the highest, and that whatsoever offence or injury is in Parliament time offered to the meanest Member of the House, is to be adjudged as done both against the King, and the whole Court of Parliament.

And the chief Justice Sir *Edward Mountague*, and the rest of the Judges confirmed with divers reasons all that the King said to that purpose.

Touching

Touching a Lord at the ſute in the *Star Chamber*, for a contempt or ryot, &c. yet the ſute is to be ſtayed, &c. by priviledge in Parliament time.

*Precedents alledged by Mr. Attorney Generall, to prove, that a Lord of Parliament may be commited in Parliament time, for a perſonal Offence done to the* KING *though it be neither Treaſon, Felony, or breach of the Peace.*

1. *Preſid.* PHilip Earl of *Arundell*, was committed and not for Treaſon, ſitting the Parliament, *Anno* 28. *Eliz.* For which Mr. *Attorny* cites *Cambden* in the firſt part of his Hiſtory of Queen *Elizabeth.*

This Parliament began the 39. of *Octob.* on which day the Earl was not preſent; *ultimo die Octobris* he was preſent, when the Speaker was preſented, and then the Parliament continued unto the 4th. of *November* following, and then the ſaid Earl was not preſent, nor the 5. 7. 8. 9. nor 10th of that *November*, though his name is inſerted in the liſt of the Lords.

All

All the other days of that ſeſſion, which continued to the 2d. of *December*, the ſaid Earls name is omitted; and then the Parliament is continued till the 15th. of *February* following, on which day the Parliam. began again, and in all that Journall the ſaid Earls name is omitted.

*Anſwers to the Precedent alledged by Mr. Attorney in the Earl of Arundels Caſe, 28 Eliz.*

*Cambden*, out of whoſe Annals the Caſe is cited, ſaith expreſly, that after the Parliament was ended, the Earl propoſing to go beyond the Seas, wrote a long Letter to the Queen, complaining of the malice of his Enemies, and of the miſ-fortune of ſome of his Anceſtors that had ſuffered in this ſtate, and touching alſo the liberty and exerciſe of his conſcience which he meant to gain himſelf in other Countreys where the Roman Catholique Religion was exerciſed; which Letter he meant ſhould have been delivered after his paſſage over: But his purpoſe being diſcovered, he was taken in *Suſſex* while he was entring on his Journey, and thence brought back, and thence committed *Anſw.* 1.

to the Tower: And for the omitting of his name in the Journall book, on many dayes of the Parliament of 28 *Eliz.* that is no proof at all of his being committed in the time of Parliament, for there are omissions of Lords names in divers days of the Journal very frequently, when yet without question they were committed.

The Earl of *Hertford* was committed to the Tower by Qu: *Eliz. Anno* 5. 2 *Irrecd.*

That the commitment was in Parliament time, he alleadged, that the Parliam. began the 22. of *January*, Anno 5 *Eliz.* and continued untill the 10th. of *Aprill*, thence proroged to the 2d. of *October*, thence by many prorogations unto the 30 of *Septemb.* Anno 8 *Eliz.* and averred that the said Earl was committed (not for Treason, *&c.*) during the prorogation. To prove this, he cited *Cambdens* Annals in English.

*The Earl of* Hertfords *Case*, Anno 5 *Eliz.*

*Answ.* 2. THe Earl of *Hertford* was committed long before the 5. of *Eliz.* as appeareth by *Cambdens* Annals, where he placeth both his commitment, and his

his cenſure in the Star-chamber about the beginning of 1562. that is in the 4th. of *Eliz.* beginning not till the 22th. of *January*, it is plain that he was both committed, and cenſured.

*Fiſher* Biſhop of *Rocheſt.* committed in Parliament-time, *Anno* 25 of *H.* 8. for his opinion to maintain the Popes ſupremacy, which was not Treaſon by ſtatute untill the year following: For this he cited *Martins* Chronicle, *Vide Parl. Anno* 25 of *H.* 8. that the ſaid Biſhop of *Rocheſter* was not preſent all that Parliam. as appeareth by the Journal. 3 *Preced.*

*The Caſe of* Fiſher *Biſhop of Rocheſter, Anno* 25 *H.* 8.

THis Biſhop, though all were granted to be true that *Martin* ſaith of him, was not committed in the time of Parliament,

But after the Parliament ended, and that both for miſpriſion of Treaſon, and for Treaſon.

Firſt, one of his offences is ſuppoſed to have been the denying to take an oath of Supremacy ordained by the ſtatute of 25 *H.* 8. *Cap.* 222. for the defence of that Act, the refuſall whereof was miſpriſion by the ſame Act.

But the first time this Oath was offered to any man was the very first day of the Parliament, that is the 30th of *March* when the Form of it was made, and remains yet in the Journall of that year, so that his refusall of that Oath must be either on the very last day, on which it seems it was not: Because he is not mentioned in the Journal to have been there present, or after the end of the Parliament; for before that time never was any man put to swear that Oath.

Secondly, to this offence is added in *Martin*, that he contested, and protested against the Act of Parliament touching the dissolution of the Marriage of the Queen *Katherin*, and the confirmation of that with Queen *Anne*, for which he was committed, and suffered as a Traytor: But untill a moneth after the Parliament, it was not treason to do any Act against the second Marriage, as appeareth in the body of that statute: And after the moneth ended, that is from *May* following, it was by that statute made Treason to do any Act in derogation of it: so that neither his misprision of Treason, nor his Treason for which *Martin* saith he was committed, nor his commitment could fall in the time of the Parliament; nor doth *Martin*, nor any other say so, nor doth the Journall

Journall that hath not his name in that parliament prove any such matter, for in that very Journall divers Lords names are often omitted, that no man can conceive stood there at that same time committed, yet perhaps there was reason enough to have committed him in the Parliament time also, for he stood then very much suspected of Treason, as we may see by the Act of the said Parliament, wherein he was attainted of misprision of Treason.

But the truth of the Case is, that the Relation of it in *Martin* is false here, as it is delivered, and divers mistake it, that wrote before him, this Bishop was not condemned that year at all, for ought appears not committed, but in 26 *H.* 8. he was attainted by Act of Parliament of misprision for refusing the oath, and thereupon committed; and in the 27th. year of *H.* 8. he was attainted for speaking trayterous words against the Stat. of 26 *H.* 8. *Cap.* 13. 25 *H.* 8. *c.* 4.

*An:* 28 *H.* 6. the Duke of *Suffolk* being accused by the Commons of Treason, put himself upon the Kings grace, and not upon the Peers, and the King alone judged him, but required that a protestation might be entred to save the privilege of their parage. 4 *Pryn.*

## The Duke of *Suffolks* Caſe, in *Anno* xxviij. *Hen.* 6.

*Anſw.* 4. IN that Caſe, for ſo much as concernes Commitment, (which is the onely queſtion now agitated) it appears expreſly, that when it was in queſtion, (before the particular accuſations that the Commons put up againſt him) whether he ſhould be committed by reaſon of a generall fame raiſed againſt him, the Lords onely determined, that he ought not yet to be committed.

Rot. Parliament, 18 *H* 6. Act. 16. Afterwards the Commons accuſed him in particular, that by his Invitation, the French King was ready to invade the Realm. At the requeſt of the Commons, it is ſaid he was committed to the Tower; but the Roll mentions not by whom: But howſoever, there is nothing in that Proceeding concerning Commitment, that ſhews he was at all committed for any leſs offence then Treaſon. And before the charge of Treaſon laid againſt him, the Lords alone determined, whether he ſhould be committed or no. Afterwards, the Commons put in two bills of Accuſation againſt him, one of divers

vers Treasons, the other of offences of like nature. And he is by Writ brought from the Tower to answer; and then desires copies of the accusations, which are granted him: And the King, by advice of all the Lords, then committed him to the Award of three Esquire, to be kept in a Tower at *Westminster*. Ibid. 48.

Now for the Kings judging of him in time of Parliament, which is the point objected, the Case goes on thus:

The 13 of *March*, which was four days after, he made his answer to divers particulars, the King and the Lords sitting in Parliament. Ibid. Act. 50. 52.

The 14 being *Saturday*, the Chief Justice, by the Kings commandment, remembred all the Lords of what was done the day before in this matter, and asked, what advice they would therein give to the King. At which time, they deferred their advice until the *Munday* following: But on *Munday* following nothing was done; and on *Tuesday*, the King sent for the Lord Chancellour, and all the Lords that were in Town, to his Palace at *Westminster*; and when they were all assembled, he sent for the Duke also, who came and denied divers of the offences, and submitted himself wholly to the Kings Rule

Rule and Government, to do with him as he list.

Thereupon the Lord Chancellour, by the Kings Commandment, told him, That he conceived that the Duke not putting him on his Parage, had submitted himself wholly to the Kings Rules and Governance; wherefore touching the Treason, the King held him neither clear nor guilty. And touching the other offences, the King by force of his submission (as the words of the Roll are) by his own advice, and not reporting him to the advice of his Lords, nor by way of Judgement (for he is not in place of Judgement) putteth you to his Rule and Governance (that is to say) that you before the first of *May* next coming, shall absent your self out of this Realm of *England* for five years, *&c.*

Ibid Act 50, & 52.

And instantly upon this so sayed by the Chancellour, the Viscount *Beaumount* on the behalf of all the Lords, and by their advice, assent and desire, declared, That this that was so decreed and done by him, concerning the person of the said Duke, proceeded not by their advice and counsel, but was done by the Kings own Demeanance and Rule. and desires that this may be entred in the Parliament Roll, with this Protestation,

That

That it should not be, nor turn in prejudice nor derogation of them, or their posterity; but they may have, and enjoy their liberty and freedom in case of their Parage hereafter, as freely and largely as ever they, or any of their Ancestors or Predecessors had and enjoyed before his time.

Upon this it is now objected, that the King here judged him, and the Lords demanded him not. But it is first plain, that it is no judgement at all: The Chancellour says expressly, it was neither by way of judgement, nor in place of judgement.

Secondly, A judgement could not be so given against him, neither was it any legal banishment; for by the ordinary course of the Common Law, there is no punishment by banishment; and that which hath been in examples, hath been by judgement given in Parliament; as appears in that famous case of the Dukes of *Hereford* and *Norfolk*, under *R.* 2. and others at that time. And for the Lords demanding him, there was no need at all or colour why they should have demanded his person, for he was not restrained from them. He was extrajudicially bid absent himself, onely out of the Kingdom, and of his own will to obey the King; which while he was about to do, he was taken

Rot. Judic. 21. R 1. part. 5. Act. 18. Rot. Judic. 19. R. 2. &c.

taken upon the Sea, and there ſlain; and for the matter of judgement and proceeding againſt him, which ſhould otherwiſe have been before the Lords againſt him, they ſufficiently ſaved their right, by proteſting firſt, that all that was done to the Duke by the King, was onely by the Kings own Demeanance and Rule, and that this ſhould not prejudice their right of Parage, or their (*Jus Paritatis*) which is their right of judgement as Peers, as it is called in the Proteſtation of the Clergy, when they left the houſe, becauſe they would not be party to the judgement of blood, in the 11 *R* 2.

Preced. 6. *Anno* 8 *H.* 6. the Commons petitioning for the diſcharge of *William Lark*, arreſted in Execution during the Parliament, and that the King would be pleaſed alſo to ordain, That no Lord, Knights, Citizens and Burgeſſes, nor their ſervants, coming to the Parliament, may be arreſted during the Parliament, unleſs it be for Treaſon, Felony, or breach of the peace. The King granted the firſt part of their petition, but (*quant ad Remnant le Roy s'adviſera.*

*The*

*The Case of* Lark. *Rot. Parliament, Anno 7. H. 6. n. 59.*

*Answ.* TO this the Answer is full, that the latter part of the Bill doth comprehend more then it was fit the Royal assent should have been given unto, and more then was, or at this day is the Law of Parliament.

For it is, that no Member of either House, be arrested or detained in prison during the Parliament, saving in these three cases. To be arrested, is to be taken with Officers by Process, or otherwise.

To be detained in prison, is to be detained after an Arrest, though in truth it be none: So that the Bill is desired, not onely that none should be arrested or detained upon Arrest during the Parliament, which is the onely priviledge supposed in the body of the Bill; but also, that none should be detained in prison during the Parliament; whereas there is no doubt, but that any of the House of Commons, or their servants, or the servants of Lords being detained in prison, upon an Execution served upon them, before the time of priviledge of Parliament; or being in Execution by any other ordinary

ordinary course of Justice before that time ought to be detained still, as it is practised still at this day. And accordingly also fourth Limitation is added to those three the 13 *H.* 6. in *Thorps* Case, where Treason, Felony, Surety of the peace, and condemnation before the Parliament, are the causes excepted; so that there being more asked by the Bill, then the privilege of Parliament allowed, there was reason enough why the King assented not unto it.

Preced. 4. And 1 *H.* 4. the Bishop of *Carlile* was arrested by the Lord Marshal in Parliament time, and not for Treason &c. for he was committed to the Abbey of S. *Albans*, which was no prison for Traytors.

---

*The*

## *The Commitment of the* Biſhop *of* Carlile *in Parliament An. 1 h.* 4.

*Anſwer.* THIS Biſhop was committed for as high treaſon as could be uttered, for he expreſly denyed *H.* 4 to be a King in open Parliament. And for this being committed to the Abby of Saint *Albans* that or any place without queſtion at the pleaſure of the King was a priſon for Traytors as well as others:

*An.* 5. *h.* 4. the Lords of Parliament claimed their priviledge to judge the Earl of *Northumberland* in reſpect of the ſtatute of 25 *Ed.* 3. and not in reſpect of priviledge of Parliament. 7 *Preſident*

## *The Earl of* Northumberlands Caſe *Anno* 5, *H.* 4

7 *Anſwer* THE Lords in that Caſe expreſly claim and exercise their right of judgment both in matter of treaſon, and then the ſtatute againſt liveries, thereupon they judge the Earls offence not to be Treaſon nor Felony, but they judge alſo that it was treſpaſs only, and for that they judge alſo that he ought

to

to make Fine and Ranſom at the Kings w
ſo that upon the one ſtatute as Judg
in Parliament, they judge the fact to be
treaſon, and the iteration of their being Ju
ges of Parliament, in this Caſe in the Roll
an expreſſe mention and claim of their pri
ledge alſo.

8 Preced. *An.* 15 E. 3. the King denyed the Arc
Biſhop of *Canterbury* to come into the Pa
liament houſe until he had anſwered certa
*An*ſwers objected againſt him in the Exch
quor, and then alſo the King d nied his en
trance, yet at laſt at the interceſſion of th
Lords he was admitted.

For this Mr. Attorny cited *Mathew Parker de Antiquitate Eccleſiæ Brittanniæ.*

*The Caſe of the Arch-Biſhop of* Canterbury Stratford *An.* 15 *E.* 3.

8 *Anſwer.* IT is true that the King denyed him ſometimes to come into the houſe untill he had anſwered thoſe Articles, but he did as upon challenging of his right as a Peer, and a Baron of the Kingdome, come in before he had anſwered them, and ſo well he underſtood the right of *Pairalety*, that though the Parliament-Houſe doore was ſhut againſt him, where

*Antiqui. Eccleſiæ Brit. et Godwin in vita ejus.*

where he was kept out by violence, he yet ſtood there, and profeſſed he would not thence until he was either ſuffered to come in, or els ſome cauſe were ſhewed why he ſhould not; and what the Lords thought of his being kept out of the houſe, or queſtioned in any other Court ſitting the Parliament may appear in the Roll of that year, where while he was kept out, they deſired the Law to be declared touching queſtioning of Peers in any other Court but in Parliament, and thereupon a Committee of 12 Lords was made to examine in what Caſe Peers ſhould be found to anſwer in Parliament and not elſewhere. And the Committees report is general (*que lez Pairs de laterre ne devient eſtre areſtez ne meſnez in Judgment ſi non en Parliament et per leur pairs*: And the ſame day that this was reported, the Arch-Biſhop came into the Houſe, where he deſired of the King that he might be tryed, which the King granted.

*An.* 3. *E.* 3. *Termino paſc.* the Biſhop of *Wincheſter* was indicted in the Kings bench for departing from the Parliament at *Saliſburie.* 9 Preced.

*The*

*The Caſe of the Biſhop of* Wincheſter
*Anno.* 3. *E.* 3.

*Anſwer.* THis was the ſame *Stratford* that was Arch-Biſhop of *Canterburie*, and in that Caſe of 15. E. 3. but it is plain that the whole proceedings againſt him was after the Parliament from whence he departed: The Parliament was kept at *Saliſburie* ( not *Salop* ) as it is falſe printed in the year books, and beginning in *quinden. Michaelis* it ended 31 *Octobris* following as appears by the Writs for levying the expences of the Knights and Burgeſſes.

*Dors clauſ. An.* 2. *E.* 3. *Memb.* 15.

And the next Parliament is ſummoned by Writ dated the 14 of *June* 5. *E.* 3 now *E.* 3 began his Raign the 25 of *January*, ſo that from the 31 *October* in the 2 *E.* 3. to the 14 *Junii* in 3. *E.* 3. there was neither Parliament held nor any ſummons ſent forth; in that time falls *Eaſter* Term wherein the Biſhop of *Winton* was queſtioned in the Kings bench as appears both in the year book, and the Roll of the Caſe, ſo that it proves nothing at all to the point in queſtion, being done out of Parliament.

*Dors clauſ. An.* 2. *E.* 3. *Memb.* 19. *Paſch.* 3 *E* 3. fol. 9. et *Paſch.* 3. *E* 3. Coram Rege & Rex Mem.

This being read it was agreed upon the que-

by the whole house (*nemine dissentiente*) that the priviledge of this house is, that no Lord of Parliament, sitting the Parliament or within the usual times of priviledge of Parliament, is to be imprisoned, or restrained without sentence or order of the house, unless it be for Treason or Felony, or for refusing to give surety of the peace. Question.

And it was hereupon ordered that the said Lords sub-Committees for priviledges &c. or any five of them shall meet this afternoon to consider of a remonstrance of the priviledges of the Peers of Parliament, and of an humble petition to be made unto his Majestie to enjoy the same. Order.

The Lord president reported the remonstrance and petition of the Peers concerning the claim of their priviledges from Arrests and Imprisonments during the Parliament, which was conceived by the Lords Sub-Committees of priviledges according to the order of the house 18 of *April*, the which was read 1. & 2. *vice in hæc verba* (viz.) Privileges of Peers

## *The Remonſtrance and Petition of the* PEERS.

MAy it pleaſe your Majeſtie, we th Peers of this your Realm now aſſem bled in Parliament finding the Earl of *Arund* abſent from his place that ſometimes in th Parliament ſat amongſt us, his preſence wa therefore called for; but hereupon a meſſag was delivered unto us from your Majeſty b the Lord Keeper, that the Earl of *Arunde* was reſtrained for a miſdeamenor whic was perſonally to your Majeſtie, and lay i the proper knowledge of your Majeſtie, an had no relation to matter of Parliament: th meſſage occaſioned us to enquire into th acts of our Anceſtors, and what in like cale they had done, that ſo we might not er in any dutifull reſpect to your Majeſtie, and yet preſerve our right, and priviledge of Parliament: and after diligent ſearch both of all ſtories ſtatutes and Records tha might inform us in this caſe, we find it to be an undoubted right and conſtant priviledge That no Lord of Parliament, ſitting the Par liam. or within the uſuall times of priviledge of Parliament, is to be impriſoned or reſtrai ned (without ſentence, or order of the houſe, un-

unleſs it be for Treaſon or Felonie, or for refuſing to give ſecurity for the peace: and to ſatisfie our ſelves the better, We have heard all that could be alleadged by your Majeſties learned Councel at law, that might any way infringe or weaken this Claim of the Peers and to all that claim be shewed and alleaged, ſo full ſatisfaction hath been given as that all the Peers in Parliament upon the queſtion made of this priviledge, have *una voce* conſented that this is the undoubted right of the Peers, and inviolably have been enjoyed by them: wherefore we your Majeſties loyal ſubjects and ſervants the whole body of the Peers in Parliament aſſembled, moſt humbly beſeech your Majeſtie, that the Earl of *Arundel* a Member of this body, may preſently be admitted with your gracious favor to come, ſit and ſerve your Majeſtie, and the Commonwealth, in the great affairs of this Parliament, and we ſhall pray, &c.

This remonſtrance and petition being read, it was generallie approved of by the whole houſe and agreed to be preſented unto his Majeſtie by the whole houſe:

And further agreed that the Lord Preſident, Lord Steward, the Earl of *Cambridge* and the Lord great Chamberleyn ſhould pre-

ſently go to the King, to underſtand his plea
ſure, when they ſhall attend him.

And the ſaid *Lords* being returned, Th
Lord preſident reported, that his Majeſ
had appointed this day between two an
three, for the whole Houſe to attend his Ma
jeſty, with the ſaid Remonſtrance and pe
tition in the Chamber of preſence at *Whit
hall.*

And it was agreed that the Lord Keep
ſhould then read the ſame unto the King, an
preſent it unto his Majeſty.

The 20. of *Aprill*, 1626. the Lord Pre
dent thus reported the Kings Anſwer unt
the Remonſtrance, and Petition of the Lor
delivered unto his Majeſty.

The Kings Anſwer.

My Lords,

*YE have ſpent ſome time in this buſineſ
and it being of ſome conſequence, I ſhou
be thought raſh, if I ſhould give a ſudden An
ſwer; And therefore I will adviſe of it, an
give you a full Anſwer in convenient time.*

Priviledges.

The xx. of *Aprill*, 1626. This day the Hou
was called, and the Earl of *Arundell* bein
called, the Lord Keeper ſignified to the hou
that his Majeſty hath taken into his conſid
ration, the Petition exhibited by their Lor
ſhip

ſhips, the xix. of *Aprill*, concerning the Earl of *Arundell*, and will return anſwer thereunto with all expedition.

The 2. *Maij*. 1626. it was this day ordered the Lord Keeper do move his Majeſty from the Houſe for a ſpeedy and gracious Anſwer unto the petition, on the behalf of the Earl of *Arundel*. Order.

The fourth of *May*, the Lord Keeper ſignified unto their Lordſhips, that according to the order the ſecond of *May*, he had moved his Majeſtie from the Houſe, on the behalf of the Earl of *Arundel*; who anſwered, That it is a cauſe that he hath had a great deal of care of, and is willing to give your Lordſhips ſatisfaction, and hath it in his conſideration how to do it, but hath been interrupted by other buſineſſes, wherein Mr. Attorney hath had much occaſions of conference with him (as your Lordſhips are acquainted) but will with all conveniency give your Lordſhips ſatisfaction, and return you an anſwer. The Kings ſecond Anſwer, upon my Lord *Keepers* Motion.

The nineteenth of *May*, 1626. the Houſe being moved to petition the King touching the Earl of *Arundel*, theſe Lords were appointed to ſet down the form of the ſaid petition; *viz.* Priviledges

The Lord Preſident.
The Earl of *Eſſex.*
The Biſhop of *Norwich.*
The Biſhop of *Coventry* and *Lichfield.*
The Lord *North.*
The Lord *Ruſſel.*
The Lord *Denny.*
The Lord *Montague.*

Who reported the ſame in writing as followeth.

May it pleaſe your Majeſtie,

2. Petition of the Lords.

*WHereas the whole body of Peers now aſſembled in Parliament, did the 19 of* April *exhibite to your Majeſtie an humble Remonſtrance and Petition, concerning the priviledges of Peers in Parliament, and in particular, touching the Earl of* Arundell, *whereupon we received a gratious Anſwer, that in convenient time we ſhould receive a full Anſwer, which we have long, and dutifully attended, and now at this time ſo great buſineſs being in handling in the Houſe, we are preſſed by the buſineſs, to be humble ſuitors to your Majeſty, for a gratious and preſent Anſwer.*

Which

Which being read, was approved by the Houſe, and the ſaid Committee appointed to preſent the ſame unto his Majeſty, from the Houſe, at ſuch time as the Lord *Chamberlain* ſhall ſignifie unto them that his Majeſty is pleaſed to admit them to his preſence.

The 21. of *May* 1626. the Preſident reported the Kings Anſwer unto the Petition, from the Houſe touching the Earl of *Arundell* (viz.)

My Lords, I did little look for ſuch a Meſſage from the Houſe, I have been of the Houſe, and did never know ſuch a Meſſage from the one Houſe to the other: Therefore when I receive a Meſſage fit to come from you to your Soveraign, you ſhall receive an Anſwer.

The Lord Preſident further reported, that the Lords Committes, appointed to deliver the ſaid Petition unto the King, did thereupon withdraw and required him (the Lord Preſident) humbly to deſire his Majeſty to be pleaſed to let them know, unto what poynt of the ſaid Petition he takes this Exception.

And that his Majeſty willed him the ſaid Lord Preſident to ſay this of himſelf, (*viz.*)

The exception the King taketh is at the peremptorineſſe of the Termes, (to have a preſent Anſwer) and the King wonders at their impatience, ſince he hath promiſed them an anſwer in convenient time.

Hereupon the Houſe altered their former Petition, leaving out the word (preſent,) and appointed the former Committee, humbly to deliver the ſame to his Majeſty, at ſuch time as the Lord *Chamberlain* ſhall ſignifie unto them, when his Majeſty will be pleaſed to admit them to his preſence.

The 14. of *May* 1626. The Lord Preſident reported the Kings anſwer unto the petition of this houſe concerning the Earl of *Arundell*, (viz)

The Kings anſwer unto the Petition, as it was altered.

It is true, your word (preſent) was ſomewhat ſtrange unto me, becauſe ye do not uſe it from one houſe to another: But now that I know your meaning, you ſhall know this from me, that you ſhall have my Anſwer ſo ſoon as conveniently I can: And this I will aſſure you, it ſhall be ſuch an anſwer, as you ſhall ſee I will not trench upon the priviledges of your Houſe.

The 17. of *May*, 1626. Their Lordſhips being moved to renew their humble petition to the King from the whole Houſe, on the behalf of the Earl of *Arundell*, theſe Lords

Lords were appointed to draw up the said Petition (*viz.*)

The Lord Preſident.
The Lord *Chamberlain.*
The Earl of *Dorſet.*
The Earl of *Devon.*
The Earl of *Mulgrave.*
The Viſcount *Saye*, and *Sſale.*
The Lord *North.*

Who having penned and reported the ſame to the Houſe, it was read in *hæc verba*, (viz.)

*May* it pleaſe your *Majeſtie*, the cauſe that moves us now humbly to attend your *Majeſtie* in one whole body (as at firſt we did) is becauſe we obſerve that the houſe of Commons have ſpeedily received a member of theirs being committed; we the *Peers* ambitious to deſerve of your *Majeſtie* & to appear in the eye of the World as much reſpected in our rights and priviledges as any peers or Commons have ever been, acknowledging you a King of as much goodneſs as ever King was, do now again humbly beſeech that the Earl of *Arundel* a member of our houſe may

may be reſtored to us it ſo much concerning point of priviledge, as that we all ſuffer in what he ſuffers in this his reſtraint, which petition was generallie approved of, and ordered to be preſented at ſuch time as the Lord Chamberlain ſhall ſignifie his Majeſties pleaſure to admit their Lordſhips to his preſence.

The 19th. of *May* 1626 the Lord Chamberlain ſignified to their Lordſhips that his Majeſtie is pleaſed that this houſe attend him at two of the clock this afternoon at *Whitehall* the 19 of *May* 1626. his Majeſties anſwer unto the Petition of the houſe concerning the Earl of *Arundel* the 19 of *May* at *Whitehall* is reported (*viz*) his Majeſtie is pleaſed to admit them to his preſence.

The Kings Anſwer, My Lords I ſee that in your petition you acknowledge me a King of as much goodneſs as ever King was, for which I thank you and I will endeavour by the grace of God never to deſerve other: But in this I obſerve that you contradict your ſelves, for if you be leive me to be ſuch as you ſay I am, you have no reaſon to miſtruſt the ſincerity of my promiſes, for whereas upon often petitions made by you to me concerning this buſineſs I have promiſed to give a you full anſwer with all

all convenient ſpeed, by this again Importuning me, you ſeem to miſtruſt my former promiſes. It may be ſaid here is an emergent cauſe, for that I have delivered a Member of the lower houſe, in this my Lords by your favour, you are miſtaken, for the Cauſes do no waies agree, for that he that was committed of the houſe of Commons was committed for words ſpoken before both houſes, which being ſuch as I had juſt cauſe to commit him, yet becauſe I found that they might be words only miſplaced, and not ill meant, and were ſo conceived by many honeſt men, I was contented upon his interpretation to releaſe him without any ſute from the lower houſe; whereas my Lord of *Arundels* fault was directly againſt my ſelf having no relation to the Parliament: yet becauſe I ſee you are ſo impatient I will make you a fuller anſwer then yet I have done, not doubting but that you will reſt contented with that. It is true, I have Committed him for a cauſe which moſt of you know and though it hath been no more I had reaſon to do it, yet my Lords, I aſſure you I have things of greater importance to lay to his charge, which you muſt excuſe me not to tell you at this time, becauſe it is not yet ripe, and it would much prejudice my ſervice to do

do it, and this, by the word of a King, I d
not ſpeak to delay you, but as ſoon as it i
poſſible you ſhall know the cauſe, which i
ſuch that I know you will not judge to b
any breach of your priviledges, for my Lord
by this I do not mean to ſhew the power o
a King in diminiſhing of your priviledges,

Order. This being read again it was ordered the Committee to meet on Munday next at two of the Clock *Poſt Meridiem* and conſider how further to proceed with dutifull reſpect to his Majeſtie and yet ſo as it may be for the preſervation of the priviledges of the Peers of this Land, and the liberties of the houſe of Parliament.

Report. The 24 of *May* 1626 the Lord preſident reported the petition agreed on by the Lords Committees for priviledges, &c to be preſented unto the King which was read in *hac verba* (viz).

The Petition May it pleaſe your moſt excellent Majeſtie, what ever our care, or deſire is to preſerve our right of peerage, yet it is far from our thoughts either to diſtruſt, or to preſſe any thing that ſtands not with the affection and duty of moſt loyal and dutifull ſubjects: and therefore in all humilitie we caſt our ſelves before your Majeſtie aſſuring our ſelves, in that ſacred word of a King, that

with

with all possible convenience, your Majestie will please either to restore the Peere to his place in Parliament, or express such a cause as may not infringe our Priviledge.

Which was generally approved of, and ordered to be presented to his Majestie by the whole house, and the Earl of *Carlile* and the Lord *Caleton* to go presently, and know the Kings pleasure when they shall attend his Majestie. Order

Who being returned, reported that his *Majestie* had appointed this afternoone at two of the Clock for the same.

The 25 of *May* 1626. the Lord keeper delivered the Kingsanswer unto the petition of the house yesterday at *Whitehall* to be read, which followeth in *hac verba* (viz.) The Kings Answer

*My* Lords your often coming to me about this business made me somewhat doubt ye did distrust me, but now since I see you rely wholly on me, I assure you that it shall prevail more upon me then all importunities, and if ye had done this at the first, I should have given ye content; and now I assure ye, that I will use all possible speed to give you satisfaction, and at the farthest before the end of this Session of Parliament

This being read the second time, the house was moved that all business might be layed aside

aside, and consideration might be had how their priviledges may be preserved unto posterity, and the house being put into a Committee for the freer debate thereof and afterwards resumed, it was ordered the house to be adjourned till to morrow and all businesses to Cease.

The 26: of *May* 1626. the *L*ord Keeper delivered this message from the King, *viz.*

3 Message from the King.

His Majestie hath willed me to signifie unto your *L*ordships that he doth marvail that his meaning in his last answer should be mistaken, and for the better cleering of his intention hath commanded me to signifie unto your *L*ordships his further answer, which is that your Lordships last petition was so acceptable to his Majestie, that his intent was then and he is still resolved to satisfie your Lordships fully in what you then desired.

It is ordered that all business be adjourned till this day seavennight.

And *memorandum* that the Duke of *Buckingham* began to signifie unto their Lordships that he would declare his desire to have the Kings Council allowed him to plead his cause: But the *L*ords would not hear him, because they would entertain no business and so the house was adjourned to the second of *June*.

*Veneris*

*Veneris* the ſecond of *June* 1626. the Lord Keeper delivered a meſſage from the King in *hec verba*, &c.

His Majeſtie hath commanded me to deliver to your Lordſhips a Meſſage touching the Earl of *Arundel*, that his *Majeſtie* hath thought of that buſineſs, and hath adviſed of his great and preſſing affairs which are ſuch as makes him unwilling to enter into diſpute of things doubtfull, and therefore to give you clear ſatisfaction touching that caſe whereby you may more cheerfully proceed in the buſineſs of the houſe, he hath endeavoured as much as may be to ripen it, but cannot yet effect it, yet is reſolved that by *Wednesday* (which was the 14 of *June*) ſeavennight at the furtheſt, he will either declare the cauſe or admit him to the houſe, and addeth further upon the word of a King, that if it ſhall be ſooner ripe, which he hath good cauſe to expect, he will declare it with the ſooneſt, & further that if the occaſion doth him enforce to ſtay to the time prefixed yet, he doth not purpoſe to ſet ſuch a ſhort end to the Parliament; But that there ſhall be an ample and good ſpace between that and the end of the ſeſſion, to diſpatch affairs. The Kings Meſſage

This meſſage being delivered, the houſe was adjourned (*ad libitum*) and put into a Com-

Order

Committee, and being resumed it was agreed all other businesses to cease, but this of the Earl of *Arundels* concerning the priviteges of the house, and the house to meet thereon to Morrow morning and to be put into a Committe to consider thereof; and so the house was adjourned to the next day.

*Sabathi* 3 *die junii* 1626. The Lord Keeper delivered a message from the King to this effect (*viz*)

A Message from the King.

That in the matter concerning the Earl of *Arundel*, his Majestie hath been very carefull and desirous to avoid all jealousie of violating the priviledges of this house, that he continueth still of the same mind, and doth much desire to find out some expedient way, which might satisfie your Lordships in point of priviledge, and yet not hinder his Majesties service in that particular; but because this will require some time, his Majestie (though his great affairs are instant and pressing) is unwilling to urge your Lordships to go on therewith, till his Majestie hath thought on the other, and therefore hath commanded me to signifie his pleasure, that his Majestie is contented your Lordships adjourn the house untill thursday next, and in the mean time his Majestie will take this particular business into further consideration it

is

is agreed the Lord-Keeper render unto his Majeſtie from the houſe their humble thanks for his gracious reſpect untotheir priviledges: and then the Lord Keeper demanded of the Lords whether their Lordſhips would adjourn the houſe untill thurſday, whereupon it was agreed by the Lords, and the houſe was adjourned, and all buſineſſes to ceaſe, unto the ſaid Thurſday.

*Jovis* 8 *die Junii* 1626 the Lord Keeper delivered this meſſage to the Lords from his *Majeſtie* (*viz*) that on Satturday laſt his *Majeſtie* ſent word to the houſe that by this day he would ſend them ſuch an anſwer concerning the earl of *Arundel*, as ſhould ſatisfie them in point of priviledge, and therefore to take away all diſpute, and that their priviledges may be in the ſame eſtate as they were when this Parliament began, his *Majeſtie* hath taken off his reſtraint of the ſaid Earl, whereby he hath liberty to come to the houſe: The Earl of *Arundel* being preſent did render his humble thankfulneſs unto his Majeſtie for his gracious favour unto him, and gave their Lordſhips alſo moſt harty thanks for their often interceſſions for himunto theKing, and proteſted his loyaltie, and faithfull ſervice unto his Majeſtie.

## *How the parties arrested have been set at Libertie.*

*An.* 8. *H* 6. *no* 5. 7. *William Lark* servant unto *William Wildred* a Burgesse of Parliament, being arrested and Imprisoned in the Fleet upon an Execution out of the Kings Bench, upon complaint made thereof by the Commons, the King by the advice of the Lords, at the request of the Commons, and by consent of the Plaintiff, ordered the said *William Lark* to be delivered out of prison: And that after the end of the Parliament, the plaintiff shall have execution again by Process, as if there had bin no execution had before.

*An.* 31. *H.* 6. the Parliament began at *Reading* 6 *March* and continued untill the 18 day of *March*, and then after divers prorogations it began at *Westminster* the 14 of *February* following; in the interim of the prorogation in *April*, and the acces the 14 of *February* following, *Thomas Thorpe* the Speaker is arrested in execution at the suite of the Duke of *York*, the Commons made request to the Lords for their Speakers libertie, the Lords demanded the opinion of the Judges (touching the arrest in time of

Pro-

prorogation, and denyed him his libertie, whereupon the Commons were commanded to choose a new speaker

*Anno.* 39 *H.* 6. *no.* 9. *Walter Clarke* of *Chippingham*, in the County of *Wilts* being committed to the Fleet for sundry condemnations, as well to the King as to others, is discharged and set at libertie out of the Fleet at the petition of the Commons to the King and Lords, and that without bail or mainprise.

*Anno.* 12. *E.* 4. at the petition of the Commons, *William Hide* a Burgess of *Chippingham* in *Wilts*, being in execution in the Kings bench, is delivered by a Writ out of the Chancery, saving the Plaintifs right to have execution again, after the Parliament ended *no.* 55.

*An.* 17. *E.* 4. *no.* 35. it is enacted that *John Attwill* a Burgess for *Exeter* being condemned during the Parliament in the Exchequer upon 8 several informations, by the purchase of *John Taylor* of the same Town, shall have as many writs of *supersedeas* therefore, as he will until his coming home.

Here ariseth a doubt whether the party priviledged might be delivered out of the execution without an Act of Parliament, that is without the consent of both Houses and the King.

There may be much diſpute upon this queſtion, the ſtrongeſt allegation againſt it is that it will prejudice the Plaintifs execution, but ſince the party priviledged is not to be arreſted for any debt, Treſpaſs, or contract *pront An.* 5. *H.* 4. *no.* 7. *Antedicto* none can be arreſted during the Parliament, but for Treaſon, Felony, or breach of the peace, *pront An.* 8. *H.* 6. *no.* 57. My opinion is that the arreſt upon an execution for debt, treſpaſs, or contract is meerly void: And then it can be no prejudice to the Plaintif, but he may have a new execution after the end of the Parliament, ſo that an Act to deliver him that is ſo arreſted, or to ſave the Plaintifs rights for a new execution is (*ex abundanti*, and needleſs.

## *The opinion of the Judges in* Thorps *Caſe* An. 31. *H.* 6.

AS for declaration of the proceedings of the lower Courts in ſuch caſes as Writs of *ſuperſedeas* of priviledge of Parliament be brought and delivered: The Chief Juſtice ſaid there be many and divers *ſuperſedeas* of priviledge of Parliament brought into the Court, but there is no general *ſuperſedeas* brought to ſurceaſe all proceſs, for if there ſhould

should be, then this high Court of *Parliament* that ministreth all justice and equitie should let the proces of the common Law, and so he shall put the partie complainant without remedie for so much as actions at common Law be not determined in this high Court of *Parliament*: and if any person that is a Member of this high Court of *Parliament* be arrested in such cases as be not for Treason or Felony, or surety of the peace, or for a condemnation had before the *Parliament*, It is used that all such persons should be released of all such arrests, and make an *Attorny*, so they may have their freedome and liberty freely to intend upon the *Parliament*,

And under correction be it spoken, the declaration of the Judges in *Thorps* Case being Speaker, and arrested in the interim after the adjournment of Parliament, *An.* 31. *H.* 6. (viz.) that there is no general *supersedeas* to surcease all proces, must be understood for all time and not for all proces, and thereby to exempt executions, and their declaration at that time also that if any person that is a Member of this high Court of Parliament be arrested in such Cases as be not for Treason, or Felony, or security of the peace, or for a condemnation had before the Parliament, that is used in all such

ſuch perſons ſhall be releaſed of ſuch arreſts, *&c.* cannot be underſtood to except arreſts upon execution ſitting the Parliament, but of ſuch arreſts in the interim between the adjournment and the acceſſe as *Thorps* was, for otherwiſe to ſay that the priviledge is from arreſts for debt, is meer frivolous, and but a ſhew of priviledge and no priviledge in deed: and whereas the Judges did then further declare that it is uſed that all perſons ſhould be releaſed upon ſuch arreſts, and make an Attorny, ſo they may have their freedome and liberty fully to attend upon the Parliament: I am of opinion that in ſuch Caſes they did not uſe to make an Attourny at all, for the partie had a *ſuper ſedeas* to ſtay all proceedings againſt him, for it is a breach of priviledge to Commence but a ſuite in Parliament time againſt a Member thereof, or elſe *Bogo de Clare*, had not been puniſhed for citing the Earl of *Cornwall*, whereas he might appear by a Proctor, *An.* 8. *E.* 1. nor had the Maſter of the Temple his petition been denyed to diſtrain upon a houſe of the Biſhop of Saint *Davids* in Parliament time, whereas the Biſhops might make an Attorny to proſecute a *Keplevin*, *An. eodem E.* 1. nor would King *E.* 2. have commanded by Proclamation that the Juſtices of *Aſſize* ſhould

should *Superſedere*, where Barons or other ſummoned to Parliament were parties, they then not being arreſted, but Defendants only; It is not enough that a Member of Parliament be free in perſon onely, but in mind alſo, but how can his mind be free if he be ſubject to Suits and Executions, and being arreſted in Execution, be without remedy for his liberty, unleſs by a ſolemn Act made by conſent of King, Lords, and Commons; ſo that I conclude, leaving others to their own ſenſe in this poynt, That all Arreſts upon Execution are meerly void in this caſe, that the party ſo arreſted might be ſet at liberty by a *Superſedeas* out of the *Chancery*, & that ſuch deliverance is no prejudice to the Plaintiff, the former arreſt being none, but meerly void.

But if you demand for ancient precedents I anſwer, there are none recorded, for that the *Superſedeas* was granted of courſe, (being due) and needed no Petition for it, yet there are Precedents of latter times to prove it directly, (*viz.*)

*Ex Journal. Domus Communium Die Mercurij*, 22. Februarii, *Anno* 18. *Eliz* report was made by Mr. *Attorny* of the Dutchy, upon the Committee for the delivery of Mr. *Hales* man. *Edward Smalleye*, arreſted upon Ex-

Execution that the said Committees found no Precedent for the setting at large by the Mace, any person in arrest, but only by VVrit) and that by divers Precedents of Record perused by the said Committees, it appeareth, that every Knight, Citizen, and Burgess of this house, which doth require priviledge, hath used in that case to take a corporal Oath before the Lord Chancellour, or Lord Keeper of the great Seal of *England*, for the time being: That the party for whom such Writ is prayed, came up with him, and was his servant at the time of the Arrest made, and thereupon Mr. *Hall* was moved by the house, that he should repair to the Lord Keeper, and make Oath in form aforesaid, and then to proceed to the taking of a Warrant, for a Writ of priviledge for the said servant, according to the said Report of the said former Precedent.

By this appears the remedy for their liberties out of Arrests, and that Executions are not exempted, for Mr. *Hall* his man was then in Execution, as appears afterwards in the same Journall: I find not the Burgesse did take an Oath in case of priviledge for his own liberty, happily the Sheriffs return, or a certificate thereof was sufficient.

The VVrit of priviledge being so easie to be

be had, what needed any Petitions to be made by the Commons to the King, and the Lords for the ſame. And as there is no *Precedent* for this in the time of *E.* 3. *R.* 2. *H.* 4. nor *H.* 5. ſo there are none to the contrary, and the Lords in Queen *Elizabeths* time, did uſually of their own authority deliver their ſervants out of Execution if arreſted in Parliament time.

But now this doubt is cleared by the ſtatute of *Anno* 1°: *Jacobi*, *Cap.* 13. for new Executions to be had againſt ſuch as are delivered out of Execution by priviledge of Parliament, and for diſcharge of them, out of whoſe cuſtody they are delivered, which ſtatute notwithſtanding ſaith, that it was heretofore onely doubted of, whether ſuch deliverance by priviledge of Parliament were prejudical to the Plaintiff or no.

## *In what Caſe a new* SPEAKER *hath been choſen.*

*Anno* 1. *H.* 4. *N°*: 62. The Commons preſented Sir *John Chenye* Knight, for their Speaker whom the King allowed.

The next day the ſaid Sir *John*, and the Commons came before the King, and Sir *John*

*John* declared, that for a ſudden diſeaſe which happened, he was unable to ſerve: And that the Commons had choſen Sir *John Dorewood* in his place, beſeeching the King to allow of him, which the King did and commanded him to be Speaker, *N°*:63.

*Anno H.*4. The Commons preſented *William Sturton* their Speaker, the 18. *Maij*, the 22. of *May*, the ſaid *William Sturton* made a Speech to the King, on the behalf of the Commons, and being required to exhibit certain Articles in writing, he immediately promiſed ſo to do.

On the 25. of *May*, Sir *John Dorewood* did on the Commons behalf deny that they had given their aſſent to exhibite the ſaid Articles in writing, *N°*:9.

And on the third of *June*, the Commons preſented the ſaid *John Dorewood* for their Speaker whom they had choſen, for that the ſaid *William Sturton* lay ſick in his bed, and was not able to execute the ſaid Office, *N°*:11. It ſhould ſeem *Sturton* was ſick for grief, not that the King was not firſt acquainted with their choice of a new Speaker, before they preſented him.

*Anno* 15. *H.*6. The Commons preſented Sir *Thomas Tyrrell* Knight, their Speaker in *January*.

The

The 11. of *March*, the King understanding that Sir *John Tyrril* was fallen sick, commanded the Commons to chuſe a new Speaker, which they did that day.

*Anno* 28. *H.* 6. Sir *John Popham* Knight, was preſented Speaker, he deſired to be excuſed in reſpect of his age, And that a new choice might be made, whereunto the King agreed; And thereupon the Commons choſe and preſented Sir *William Treſham* Knight, the ſame day.

*Anno* 31. *H.* 6. *Thomas Thorpe* was preſented Speaker, after the adjornment of the Parliament he was arreſted in execution at the ſuite of the Duke of *Yorke*, The Commons at the acceſs the 14. of *February*, pray his liberty, which was denyed; And the Commons commanded to chooſe a new Speaker: The 16. of *February*, the Commons ſent word that they had choſen Sir *Thomas Charleton* Knight, for their Speaker in place of the ſaid *Thomas Thorp*, and the Chancellour anſwered, that the King liked him, *N°*: 29. theſe are all the ancient precedents.

*Anno* 5. *Eliz.* *Thomas Williams* Eſquire, was preſented their Speaker.

This Parliament is prorogued divers times.

The Speaker dyes in the *interim*.

At

At their Acceſſe, *Anno* 8. *Eliz.* 30. of *September*, the Commons (by four of their houſe) ſignifying their *S*peakers death to the Lords, requeſting their Lordſhips aide, to intimate the ſame to her Majeſty, which was done.

On the firſt day of *October*, the Commons were aſſembled in the upper houſe: And her Majeſties Commiſſion read, directed to the Lord Keeper, repeating the whole buſineſs of Parliament, commanding, conſtituting, & appointing the Lord Keeper in her name, to call the Commons before his Lordſhip, and the Lords in the higher houſe of Parliament, and there in her *M*ajeſties name to will and command them to reſort to their accuſtomed place, and there to chuſe amongſt themſelves a new *S*peaker: And after they have made their Election, that three or four of them, for and in all their names, ſhall ſignifie the ſame unto her *M*ajeſty; And thereupon her *M*ajeſty will ſignifie unto them, on what day they ſhall preſent him unto her, this is the effect of her Commiſſion.

The next day the Commons preſented Sir *Richard Onſlow*, the Queenes *S*ollicitor for their *S*peaker.

*Anno* 14. of *Eliz. Robert Bell* was preſented *S*peaker, the Parliament being prorogued

rogued divers times, he was made a chief Baron of the Exchequer, and dyed at the acceſſe 16. of *January*, *Anno* 23. *Eliz.* the Commons acquainted the Lords with his death, and the ſame courſe was taken for a new Election, *pront antea*, *Anno* 18. *Elizabeth.*

## *The Commiſſion for Choice of a new* SPEAKER.

ELIZABETH by the Grace of God, Queen of *England*, *France*, and *Ireland*, Defender of the Faith, *&c.* To our Truſty, and right VVel-beloved Councellour, Sir *Nicholas Bacon* Knight, Lord Keeper of the great Seal of *England*, Greeting; VVhereas in the beginning of this preſent Parliament holden at *Weſtminſter*, the 17. day of *January*, in the firſt year of our Reign, the Knights, Citizens, and Burgeſſes, being aſſembled in the ſame Parliament, were commanded by us to go to their accuſtomed place, and there to chuſe amongſt themſelves one to be their Speaker, according to the accuſtomed manner, whereupon the ſame Knights, Citizens, and Burgeſſes, did elect and chuſe one *Thomas Williams* Eſquire,

Esquire to be their Speaker; And the sa[id] their election, did afterwards certifie unto [us] which we did allow and ratifie, since whi[ch] time, this our present Parliament hath be[en] continued by divers prorogations, untill th[e] 30. of *September*, in this present eighth ye[ar] of our Reign; At which day the Lords Spi[ritual] ritual and temporal, & also the said Knights Citizens, and Burgesses, being assembled for this present Parliament, at *Westminster* in their accustomed places; The said Knights Citizens, and Burgesses, have declared unto us, that the said *Thomas Williams* since the last session of this present Parliament is dead, and thereupon have made their humble suite and Petition unto us, that they might have licence and commandement from us to proceed and elect amongst themselves, one other to be their Speaker, for the rest of this present Parliament yet to come; wherefore we having certain and perfect knowledge that the said *Thom: Williams* is dead, as they have alledged: And considering their humble Petition very meet and necessary to be granted, have appointed and constituted you, and by these presents we do will, and command, constitute, and appoint you for us, and in our names, to call the said Knights, Citizens, and Burgesses, before you, and other

ther the Lords ſpiritual and temporal aſſem-
bled in this our preſent Parliament, in the
higher Houſe of our Parliament at *Weſtmin-*
*ſter*, and then for us, and in our names, to will
and command the ſaid Knights, Citizens, and
Burgeſſes, to reſort to their accuſtomed
place; And there to elect and chuſe amongſt
themſelves, one ſufficient and able perſon to
be their *Speaker*, for the reſt of this preſent
Parliament yet to come; And after they have
ſo made their election, That then three or
four of them, and in all their names ſhall
ther ſignifie unto us; And thereupon we will fur-
ther ſignifie our pleaſure unto them, what
day and time they ſhall preſent the perſon
elected before us, As heretofore hath been
in like caſes accuſtomed to be done: where-
fore our will and pleaſure is, that you do di-
ligently attend about the doing of the premi-
ſes, and execute the ſame with effect; In wit-
neſſe whereof we have cauſed theſe our Let-
ters of Commiſſion, to be ſealed with our
great Seal, witneſs our ſelf at *Weſtminſter*,
the firſt day of *October*, the 8. year of our
Reign.

The laſt Ceremony uſed the firſt day of
the Parliament is, that when the Lord *Chan-*
*cellour* hath ended his Speech to the Com-
mons to chuſe their Speaker, then the Clerk
ſtands

ſtands up, and reades in *French* the names of the Receivers and Tryers of Petitions.

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## *By whom* Tryers *and* Receivers *of* Petitions *were appointed, and when.*

## CHAPTER *the* VIII.

SOme Records make it doubtful, whether the King and his Council alone, or the King, his Councell, and the Lords did appoint theſe Receivers and Tryers, I will recite the Precedents, and then deliver my opinion. *Anno* 6. *E.* 3. In the Parliament held at *Yorke*, on *Wedneſday Octab. ſanct. Hillarij*, on the ſame *Wedneſday*, it is agreed by our Lord the King and his Council, that the Petitions be recorded, as was agreed in the laſt Parliament, and the Petitions be delivered unto Sir *Henry Edneſton* Clerk of the Parliament.

Sir *Thomas de* B.

Sir *Thomas de* E, &c.

*Item*, it is agreed that the Arch Biſhop of *Yorke*, the Biſhop of *Ely*, &c. ſhall be Tryers

ers, and proceedes and shewes how they are to be answered, *&c.* And the parliament was adjourned to the next day, for that the Lords were not fully come, and the cause of summons was pronounced the next day, which was reckoned the second day of the Parliament.

*Anno* 14. *E.* 3. The Parliament held at *Westminster*, the *Wednesday* next after Midlent sunday, in presence of the King.

First, it is entred in the Roll that Proclamation was made in *Westminster Hall* against wearing of Weapons, Ryots, &c. and unlawful games near the Parliament House, (then thus) *& meſme le jour ſearent les ſouzes Cretz Ceſte voir*: Sir Thomas *de* Brayton *ſois Clerke de Parliam. Item pur Receivire les Petitions d'engleterre ſont Aſſignes Mich. de Wats. Tho. B, &c.* Then the time for the delivery, and the Tryers of Petitions.

Then that the *Thurſday* next following, the Parliament was adjourned unto *Saturday*, *&c.* on which day was declared the causes of summons.

So here they are appointed in the presence of the King, but it is not named by whom.

*Anno* 15. *E.* 3. *Lunæ*, 15. *Paſchæ*, the Roll being thus, first it is agreed that Sir

*Thomas Broughton* be Clerk of the Parliament.

*Item*, it is agreed by our Lord the King, and those of his Councel who were then come, that a Proclamation be made that none shall bear armes, *&c.*

Then followes the ordinary proclamation.

*Item*, in *Crie sic fait*, that whosoever will exhibit Petitions unto our Lord the King and his Council, that they exhibit them between this and *Saturday* next, &c. *& seront Assignes*, to receive the Petitions of *England*, these under written, *Sir Thomas de E.*, &c. and so names the Receivers and Tryers.

*Item*, It is agreed for that the prelates, Earls, Barons, and other Grandees, are not yet all come this *Monday* the first day of the Parliament & to continue the Parlia. to the next day, being *Thursday*, &c. From thence it was continued also until *Wednesday*, unto *Thursday* for the same cause, & on *Thursday* the cause of summons was proposed.

*Anno* 27. *Ed.* 3. the Parliament was summoned to begin on *Monday* 15. *Paschæ*, the King and some few Lords came, and the Parliament was continued to the next day being *Tuesday*, on which *Tuesday* it was agreed by the King and Councell, that Proclamation

clamation be made againſt wearing of Armes, *&c.*

And a Proclamation was made the ſame day, for delivering of Petitions by *Monday* next, to the King and his counſell.

*Et ſeront Aſſignez*, to receive the ſaid Petitions, &c. *prout Anno* 15. And on *Wedneſday* following the cauſe of Summons was declared.

Anno 18. E. 3. *Luna proxim. poſt Octab Trinitat.* The Roll begins thus, *Enprimes fait aſſav. q. a Meſme le lundy*, there aſſembled in the Parliament Chamber, our Lord the King, and the Prelates and Grandees under written, *viz.*

The Arch Biſhop of *Canterbury*, The Biſhop of *Chicheſter*, *Bath*, and *Ely*, and the Earl of *Huntingdon*, together with ſome Abbots and Barons, and Knights of the Counties, (*Et ſoi recitz devant eaux*, &c.) The ſummons of the Parliament to be as on that day; And the ſmall appearance wherewith the King was offended, &c. And the King commanded the Parliament to *Tueſday*, being the next day.

*Item*, be it remembred, that our Lord the King commanded Proclamation to be made, &c. againſt wearing of weapons: And on the ſaid *Tueſday* our Lord the King, and the

ſaid Prelates and the Biſhop of *London*, and the Cardinal, together with the ſaid Grandees, aſſembled again in the ſaid Chamber: *Et illoques furent accordes les noms du Ceux, qui receveroy ientles petitions du Parliament. en la Manner q ſe fuit Ceſt' aſcavoir Primerement ſont Aſſignez de Receyvors les Petitions d'engle terr.*

And ſo named the Receivers and Tryers, and becauſe the Prelates and other Grandees were not come on the ſaid *Tueſday*, *Si fut accordes et aſſentuz de continue le Parliam. tanq; au Meſterday pur attendre la venne des ditz grandes et de ce Meſterday tanq; a Jueudy*, on which *Tueſday* the cauſe of Summons was propounded, &c.

There are ſome Precedents of this nature, *Tempore* Ed. 3. to ſhew that the King & ſome Lords met the firſt day of the Parliament: And for that there appeared but a few Lords, The cauſe of Summons was not then declared, onely Receivers and Tryers of Petitions were appointed, and the Parliament continued unto another day, and the Records do not ſay directly by whom they are appointed, *vront Anno* 20. E. 3. *Furent Aſſignez*, but ſaies not by whom.

By theſe it doth not directly appear by whom theſe Receivers and Tryers of Petitions were appointed. That

That of the 6. *Ed.* 3. ſaith *pur noſtrei ſur le Roy & ſon Councell*, by his Councill are here underſtood thoſe of the *Privy Councill*, who were ſummoned to parliament, and not by the Lords of Parliament, as ſhall be declared elſewhere.

The reſt ſpeaks indifferent that they were aſſigned, but names not by whom.

*Vide* the Parliament Roll of *Anno* 37. *Ed.* 3. when the Summons were declared firſt, before the names of the Receivers and Tryers were publiſhed according to the uſe at this day, and of all Parliaments ſince the 29. of *E.* 3. and there it is thus in the end of the cauſe of Summons; *Et autre le dit Roy volt q. ſi nul ſe ſent grevez metto avant ſon Petitioin en ce Parliam. et oi ne avoir Covenable Repors et ſur ce ad Aſſigne aſcans de ſes Cleres en le Chancellarie receivoirs des ditz Petitions*, then followes their names.

Here it appears, that the Kings will is, that if any find himſelf grieved, that he exhibit his Petition, &c. and he hath aſſigned certain of his Clerks of the *Chancery* to be Receivers, &c.

*Anno* 28. *E.* 3. *Anno* 43. *E.* 3. *conſimile.*

*Anno* 40. *E.* 3. The Lord *Chancellour* concludes his ſpeech touching the Summons, The Kings will is, *que cheſcun qui ſe ſent grievez*

*Greivez metle devant ſa petition a ces ſont aſſignez per luy de ſes re et auſſi de les triers.*

The reſt ſpeaks indifferent, but this ſatisfies me fully, that none bnt the King or the Lord Chancellor *de per luy* appoints theſe receivors and tryors, &c.

I have peruſed all the Laws of *E.* 3. of purpoſe for this that ſome doubt hath been made thereof.

## *Who were anciently appointed Receivers and Tryers of Petitions.*

REceivers of Petitions were ever the Maſters of the Chancery, the Records name them *Cleres de la Chancellary*, and no other were anciently appointed, but they ſay that *An.* 6. *E.* 3. the Clerk of the Parliament who I think was a Maſter of the Chancery is appointed one, but none that had Writs of Summons were appointed Receivers, &c. ſince 6. *E.* 3.

This order was conſtantly obſerved whileſt theſe Receivers and Tryers were in uſe: but ſince they began to be out of uſe and named (*pro forma tantum*) the Judges are mingled with them: as none that were ſummoned to Parliament were appointed Receivers, ſo none

none but they that were ſummoned were appointed Tryers of Petitions.

They were ever of the Prelats, nobles and Judges.

And the Chancellor and Treaſurer were appointed to be called when need required, and they ſhould attend as ſome Records have it.

*An.* 21. *E.* 3, the Receivers, and Tryers of Petitions of *England*, *&c.* ſhall call the Kings Serjeants, and the Tryers of Petitions of *Gaſcoyne* ſhall call unto them the Juſtice and Treaſurer of Ireland, for *Iriſh* buſineſs if need be, then it follows *Et pur efforcer les Auditors, et Tryers des ditz Petitions*: as well for *England* as for other places theſe undernamed are ordained.

The Arch-Biſhop of Canterburie,

The Chancellor.

The Treaſurer.

And the Chief-Juſtice to be with the ſaid Treaſurer when they may intend it and need ſhall be.

*Within what time the Petitions were to delivered.*

PRimo die debet fieri Proclamatio prime in Aula vel Monaſterio tenentur et poſtmodum in

*in civitate vel villa quod omnes illi qui petitiones et querelas deliberare voluerint ad Parliamentum, quod illas deliberent a primo die in quinque dies proximum sequentes, ex Manuscripto. modus tenendi Parliamentum Cap. 2.*

This order was anciently observed as it may appear by the Parliament of *E.* 3. where the Proclamation is mentioned *vide* 15. 17. 20. 25. *Ed.* 3.

In all the Parliament *Rolls*, which Record their Receivers, and Tryers day is limited for the delivery of their Petitions.

They seldome allow six dayes which hath some times been prolonged for 2 or 3 dayes *ex gratia Regis prout Ann.* 25. *E.* 3. *Octabis purificationis et* 25. *E.* 3. *festo sanct. Hillarii.*

The reason of this short time, for the deliverie of Petitions, was for that the Parliament did seldome last many dayes: And therfore they werethen appointed also onthe first day of the Parliament, although it wasafterwards adjourned to another day.

Here may be a doubt of the time for answering these Petitions whether during the Parliament only.

As many as time would permit were answered sitting the Parliament, and to that purpose theseveral Tryers had several places to meet in, and they were often put in mind

mind by the Chancellor to attend the same *prout An.* 25. *E.* 3. *no.* 8. *in fine.*

## *What kind of Petitions they were*

THey were for the most part petitions for private persons for relief of any wrong or for the Kings grace *prout.*

*An.* 1. *E.* 3. *Petitio Bartholomew de Badlesmeere* for restitution to Lands, and Charters, taken violently from him.

*Petitio Henrici Com. Lancaster* for delivery of evidences.

*Petitio Johannis de Vinne* to be restored to his office.

*Petitio Thomæ de Northrope* to be allowed his costs layed out in keeping the Kings Cattle of *Bromham.*

*Petitio William filii Eudonis le Zouch* for an outlawry for murther.

*Petitio Thomæ de Brackly,* of his liberties of Weasts and Strays, &c. seized by the King.

*Petitio Rici. de Frorers,* to be allowed a debt due by the King in his account.

*Petitio Ballivorum, et proborum hominum ville de Norwich* to be allowed 200 pound which King *Edward* the third borrowed of them.

*Petitio*

*Petitio Liciæ et Multon*, to have justice in a sute begun in the Kings Bench against the Kings Father for certain mannors.

*Petitio Elizabeth Multon* against delay of Justice.

*Petitio Francis Massey* and other Merchants strangers touching a wrong done them in *France*, by Merchant strangers who are now in *England*: *Petitio Ode Lacer* Merchant of *London*, for a redress touching a depredation in *Lumbardie in partibus Bononiæ.*

*Petitio H.* S. against a piracie by 4. of the French Ships, &c.

And amongst these are sometimes petitions of a County, or a City, *prout eodem An.* 1. *E.* 3. *Rot.* 3. *in Dorso.*

*Petitio hominum Westmorland quod exonerentur de patera Balivorum Regis ibidem.*

A Petition of the CinquePorts for an explanation of their Charter.

A petition of the Dyers of London against false fulling, &c. of Cloth, &c.

## *How the* Petitions *were answered*

First let us see their direction in the time of *E.* 3. They were directed (*Au. nostre Sr le Roy et au son Councel* some few otherwise *prout An.* 1. E, 3. *au Councel le Roy Mon-*

*Monster a le Pours Prior de T.*

*Il Treshonorable ſ Monſr. William de Cliu-*
*ſupplie, I de Tampli Merchant du Por-*
*gal* : touching a robbery at Sea; Lord
*Clinton* was Conſtable of *Dover*, and Admi-
al at that time, as I conceive.

But this occurs very ſeldome yet they were
ceived and anſwered generally, they
ere directed to our Lord the King and his
ouncel.

The queſtion is who are here meant by the
Kings Councel whether all the Lords of Par-
iament or they only which were of his privy
ouncel, I was long of opinion that by the
ouncel were meant all the Lords of Parlia-
ent, But if you obſerve how the anſwers
ere given to theſe petitions you ſhall find
hat the conſent of Parliament was very ſel-
ome required.

*Vide* 6. E. 3. which is the firſt Parliament
hat mentions the manner thereof, and
hereafter the names of the Receivers and
ryers are appointed it follows.

Item it is agreed that the petitions which
all be tryed and determined by the afore-
id prelates Barons, and Juſtices ſo appoin-
d Tryers, ſhall be delivered over into the
hancery under the ſeals of two or one of
em at the leaſt. And that the reſt of the pe-
titions

ſhall reſt under the ſeals of the ſaid Tryers in the cuſtody of the Clerks, untill the next day, and ſo from day to day; and that the petitions which are to be tryed *Coram Rege* be tryed before his Majeſtie calling unto him whom he pleaſe.

And that thoſe petitions ſhall remain under the Seals of the auditors or of ſome of them, untill they be reported before the King.

Here you ſee that the petitions are to reſt under the ſeals of the Tryers, and in the Cuſtody of the Clerks (that is of the Receivers) untill they be anſwered, and then to be ſent from day to day, as they are anſwered unto the Chancery.

Except the petitions *Coram Rege*, that is thoſe that required the Kings Grace, they were to be tryed before the King, and to reſt in the mean time under the ſeals of the Auditors (*viz*) the Tryers.

To prove that by theſe words (the Councel) are not meant all the Lords of Parliament but the Kings Council only, *vide*, *An.* 31. *E.* 3. *no.* 63. The anſwer of the Petition of the Commons (*viz*) *Il ſemble au Councel que ſuit affair pur grant bien ſil plaiſt au Roy et a les gentz de la terre. Et puis noſtre Seigneur le Roy per aſſent des gentz. Commanda a la dite Coment adonque eſte antz devant luy aniſer*

*Come,*

..., &c. Touching an Act of provision ...inst *Rome*.

Where I observe also a good testimony ...t Bishops are not Peers (or *gentes de la ter-*...) they are not here understood for they ...er medled in any thing against the Pope.

And the answers in these private Petitions ...re such (as in my opinion) required not ...e consent of Parliament, *prout* if the Peti-...n were for wrong done by a private per-...: *Ro.* let him have a Writ in the Chance-...to enquire thereof, and thereupon *fiat* ...*itia*, if for allowance of any thing in ...ir account, &c.

*Ro.* let him have a Writ in the Chancery ...rected to the Treasurer, and Barons of ...e Exchequor, to view and examine the ...me, and thereupon to make the allowance ...nd the like.

If for delivery of Charters or the like in ...he Kings custodie. *Ro.* let him have a Writ ...n the Chancery to the Treasurer and Ba-...ons of the Exchequer, to make search, &c.

If for reversal of an outlawry or the like, ...t him have a writ in the Chancery to the ...stice of the Kings bench to cause the Re-...ord to be brought before them, and if there ...e error to reverse the same.

If for Piracy, or any other wrong done by

by Marchant ſtrangers in foreign domin
*Ro.* let the Petitions be delivered in Chanc
and upon hearing of the cauſe (let juſtice
done *ſecundum legem in tali caſu uſitat.*)

For theſe and more ſuch peruſe the Peti
ons of *E.* 3.

All their remedy is out of the Chancery,
now and then, a petition is of ſuch weig
or difficulty, that the Matter is reported
the houſe and there openly heard, and
termined (*prout* the Petition of the Abbot
*Thurneton ſuper Humber*) touching lands r
covered by him in the Kings bench, where
he was in poſſeſſion, and afterwards diſſe
zed by *Hugh de* Spencer.

The anſwer is *Recordum et proceſſus pr
dicti Monſtret, in Parliamento ita quod
inde fiat A. 2. E. 3. Rot. 1. in derſa.*

And the long Petition of the two *Corbet
Eodem An.* which depended *Tempore E.* 1.
*et* 2.

But it was anſwered *An.* 11, *E.* 3. by Try
ers thus. *Soit Ceſte Petition ſoit Mande a lu
par meſme le Breefe q il fac regarder tout les
proces dont mencion eſt fait en ceſt* Petition *et
Appellez Ceux qui ſont de la dit Beſoigne ſans
qil ne dyle mye au Judgment ſanns le Roy An.*
1. *E.* 3. *Rot.* 9. *Derſo*, they ſued for the Ca-
ſtle of *Tremington*, and divers other Lands
which

which *Roger de Vantort* (whose heirs they were) gave unto *Richard King* of *Almaine* (the Earl of *Cornwale*) and to the heirs of his body, the remainder to the heirs of the said *Roger Vantort*: The Petition of *Elizabeth de Burgo* is worth the observation. It is touching a recognizance enforced from her unto *Ed.* 2. not to rejoice any of his enemies, not to marry without his license nor to sell any of her Land, without his consent, the Copie of which recognizance was annexed to the petition: the Answer is by the Tryers, (*Perce q tesmoigne est q.le dit escript est en la garderobe dit breife in Chancery au gardeyn delagarderobe de fair venir lescript devant le Consaile sanz delay.* Then follows *Sur quel endorsemnt*, The Writ was made, which was there recyted and directed to the Clerk of the privy seal, (who was also Master of the *Wardrobe* commanding him to bring the same writing *Coram Consilio nostro in presente Parliamento*, &c. *Teste Meipso, &c.*

*Per Petitionem de Consilio.*

WHich shews that the Chancellor had no other Warrant then the endorsement of the Petition.

The

The Clerk of the privy Seal by vertue of this Writ brings in the said writing, which being examined and delivered in full Parliament, it was considered by the Lords and Commons that it was contrary to the Laws of the Land, & all reason; and therefore it was damned, *per agarde del Parliament*, And delivered it unto the said *Elizabeth*: By this Petition you may perceive that what was done in full Parliament, is so recorded.

So the long Petition of *Gee Staunton An.* 14, *E.* 3. was viewed and read in full Parliament, and assented unto by all in full Parliament: It was to demand Judgment in a Case depending in the Common pleas, which was of such difficulty for point in Law, that the Judges did forbear to proceed, and so the Lords of Parliament directed them on which side to give Judgement.

Note that the Commons Joined with the Lords to damn the recognizance of *Elizabeth de Burgo*, and so it was necessarily to avoid a Record; but the Commons did not join in the assent touching *G. de Stantons* Petition, for there the Lords did but direct Justice to be done in another Court.

In the time of *R.* 2. the Petitions were directed sometimes to the King, and his Councel as in Ed. 3.

Some-

Sometimes a *noſtre treſdoute Sr. le Roy et ces noble Srs. en ceſt Parliament.*

And ſome(*A noſtre Sr. le Roy et a touz lez et comes. deſon Roialme*, but they were publick Petitions, as that of the officers of the *Mint* within the Tower of *London* and the like.

And the Parliament ſitting long in thoſe days, over they did in *E.* 3. time, moſt of the Anſwers to theſe Petitions (if not all) were aſſented unto by all the Lords *prout An.* 15. *R.*2. the Petition of *Joan* the wife of Sr, *Robert Swinbourn* Knight, directed to the King, and the Lords, ſhewing that the ſaid Sir *Robert* enfeoffed divers gentlemen of certain Lands to the uſe of her, and of her younger Children, and of his laſt Will and Teſtament: And that *Thomas Swinbourne* his Son and heir entered violently upon the Lands and poſſeſſed himſelf of divers goods and Chattles, &c. And by threats and maintenance kept her out, &c.

Anſwered thus.

The petition being read in Parliament, and the reaſons of the one ſide, and on the other

and of all the Feoffees preſent in *Parliament* being heard, it was awarded by the King and all the Lords, that the ſaid *Thomas Swinbourne* ſhall make full reſtitution, &c. And alſo that the ſaid parties ſhall come before the council of the King, at a day certain to be limited them by the ſaid council, and there ſhew all their evidences,&c. And the council to make a good end if they can, if they cannot, to adjourn them over to the Common Law: And further that the ſaid *Thomas*, find to the petitioner her Children, and Servants, and to the ſaid Feoffees, And to the Executors of his Fathers Will, ſufficient ſureties for the Peace, and that he ſhould do no maintenance,menace,nor other things whereby the Common Law may be any way diſturbed of its right courſe, touching all the ſaid matters. And moreover becauſe the ſaid *Thomas* acknowledged that he ſent unto certain perſons a Letter ſhewed in Parliament of horrible menaces to the Kings people touching this matter, he is awarded to the Tower of *London*, there to remain at the Kings Will; The which impriſonment at the inſtance of the Duke of *Yorke*, the King afterwards pardoned upon his good behaviour.

I have recited his anſwer ſomewhat at large, by this I gather, and by ſome anſwers of *E.*1. *E.*2. and *E.*3. that intricate buſineſſes were diſcuſſed in open Parliament (what anſwer ſoever the Tryers had prepared) others of ſmaller moment were directed to be redreſſed by the *Chancery* without any further trouble to their Lordſhips.

But the Commons were not privy to their Anſwers, as I noted in thoſe of *E.*3. unleſſe it were to ſuch as otherwiſe legally could not paſs, *prout An* 23. *E.* 2. *Weſt. Craſt. nat. ſanct. Johann. Baptiſti* (*Anoſtr le Roy et a ſon Conſil. monſtrent Erceveſques, Eveſques, comites Barones et Autrez genz de la Cominaltie d'engle terre*, who petitioned that they might let to farm the waſtes belonging to their Mannors, which they held of the King in *Capite*, as wel within Forreſts as without, without the Kings licence: which Petition is indorſed *Coram Rege*; and the Kings Anſwer is thus.

*Il ne puit eſtre fait ſanz novele In laquele choſe fere la comminaltie de la terre ne vult nie uncore Aſſenti.*

In the times of *H.*4. Few Petitions were directed to the King and his Council,

ſome were directed to the King alone.

Some to the Lords alone.

And ſome to the Commons.

But I find none anſwered by the Commons only. If they were Petitions of grace the Commons wrote only this Inſcription, under the firſt line *viz.*

*Soit baile as Sr. perles a Roy*, or *ſoit per le a Roy per les Seiniurs.*

The others were ſent up to the Lords without any directions and here firſt began the private bills, now exhibited in Parliament.

In *An. H.* 5. *H.* 6. and *E.* 4. there are ſome Bundels of Petitions extant of theſe times.

But I cannot determine whether they were delivered to the Receivers of Petitions or no, many of them are directed to the Commons, ſome to the King and his Councel.

By theſe anſwers it ſeems that theſe and thoſe alſo of *H.* 4. were aſſented unto in open Parliament and none paſt by the Tryers alone as in the times of *E.* 3.

After theſe times we have no Bundles of Petitions extant in the Tower.

peti-

## *Petitions endorsed* Coram Rege.

THese were Petitions of grace from the King, and therefore the Tryers might not answer them *rege inconsulto.*

I will recite some of them and the proceedings thereupon, &c. viz.

*An.* 1. *E.* 3. *Rot.* 3. *Thomas* Bishop of *Worcester*, petitioned that whereas he is charged in the Exchequor with divers tenths granted for E. 2. that the said tenths might be allowed him in certain Bills in the *Wardrobe*, and that payment might be made to him of the residue *per Assignation. eidem Episc. faciend.*

*Ro.* Let him shew his Bills in the Chancery and have a writ to the Treasurer, and Barons of the Exchequer, to allow him in Debts exacted of him in the Exchequer, the sum contained in these Bills, *& quoad assignationem sibi faciend. de residuo summæ in eisdem billis Content. ponuntur ista Petitio Coram Rege.*

The petition of the Bishop of *Winchester* shewing that the Churches of *Esturies* & *Ha-*

*meldon*, are annexed to his Biſhoprick as things ſpiritual, and whereof the *Gardians*, of the ſpiritualities *Sede Vacante* are only to meddle, as the uſe of other Biſhopricks, yet *Robert de Welle* Gardian of the temporalities hath levyed the proffits thereof, and accounted for them to the King, to the value of 400 Marks, whereof he prayeth reſtitution.

Ro. *videtur conſilio, quod occupatio de fructibus hujuſmodi eccleſiarum eſt injurioſa, ſed propter poſſeſſionem habitam in hac parte, ponatur iſta petitio Coram* Rege.

*Poſtea retractata iſta petitione Coram* Rege *& Magno Conſilio, conceſſum eſt quod Cuſtodes temporalium infra ſcripti Epiſcatus non ſe intromittant Amplius temporibus vacationum de hujuſmodi fructibus eccleſiarum An.* 1. *E.* 3. Rot. 9 *Dorſo*

Here at this time ſome Petitions *Coram Rege* were anſwered at the great Councel, which was often aſſembled at the end of the Parliament, and there alſo were anſwered divers petitions of the Commons which were not anſwered in Parliament as ſhall be ſhewed in the 2 book *Cap. An.* 14. E. 3. at the Parliament held after Midlent, all buſineſſes

not

not being ended at *Easter*, the Parliament was adjourned till Wednesday seavennight after, and the King willed that at that day, the petitions which were not already answered should be then heard, and duly answered, and those undernamed were assigned to set upon Petitions *coram rege* (*viz.*)

The Bishop of *Chester.*

The Earl of *Huntington.*

*Monsr. Thomas Wake de Lydel.*

*Monsr. John de Stonnard.*

*Monsr. William de Shareshal, &c. Associez aeux les Chancellor, et Treasurer, quant Busoigne serra No.* 28. *&* 29

*An.* 25. E. 3. Receivors and Tryors being appointed it followeth thus.

And that allwaies there be present when the said Petitions be read, in case any of them doe touch the Kings Chamber, Sir *Thomas de Brembre*, or Sir *Henry de Greistock* is appointed to be called to all Petitions that concerned the Kings Chamber only, and not generally for all petitions which required the Kings special grace, or Bounty.

*An.* 4. E. 3. *Apud Wiaton inter Bunde* Petition. *Robert de Vere* Earl of *Oxford* exhibited his petition for the office of gre[illegible] Chamber

Chamberlain of *England*, whereof his Anceſters were ſeized in fee by the grant of *Henry* King of *England*, untill *H* 3. outed his Father *Robert de Vere* (*ſans Judgment*)

The firſt anſwer is, let him come before the Councel, and ſhew his deeds and monuments

And having ſhewed his Charter to the Councel, &c. The ſecond anſwer is *Pur ce q. ceſt choſe touche especialment le* Roy, *ſoit ceſte Beſoigne devant le* Roy *et ſon Conſeil*

The third anſwer to the Petition is, *ſoit ceſte petition mande au Chancellarie, & le Chancellor pris a luy les Juſtices, et autres Sages en Counſeil ordinent remedie en ce cas.*

*An.* 16. R. 2. *no.* 32. *Inter petitiones Communium* Roberte *Atmulle* and *Alice* his wife prayed the Kings pardon for that they were wrongfully condemned for taking of 700 pound of Treaſure Trove at *Gilford*

Ro. let them ſue to the King for this is no petition of Parliament.

The meaning is, this is a Petition of grace and could not be anſwered by the Councel Rege *inconſulto.*

*Nota*

*Nota* the Kings Councel prepared all the anſwers to the Petitions of the Commons to compare with the anſwer to this petition made in the upper Houſe of Parliament. *An. Jacobi* 1

That Bills of reſtitution to blood begin in upper Houſe only, and ought to be firſt ſigned by the King.

*An.* 1. *H.* 4. *no.* 18. amongſt the Petitions of the Commons and Citizens of *Lincolne* pray to be eaſed of their Fee Farme being 110. pound which they are unable to pay

Ro: let them ſue to the King who will be gracious, which is as much in effect, as (*Ponatur iſta petitio Coram* Rege) and not to begin with the Commons.

*An.* 29. E. 3. *no.* the 18. the Petition by the Commons touching *Alienations* without licenſe *tempore H.* 3.

Ro. *ſoit Monſtre, declare a noſtre ſr. le* Roy.

*Of Petitions endorſed* per authoritatem Parliamenti.

THe firſt of this ſort I find in *An.* 15. R. 2. to the Petition of *Richard Pryour* the direction is thus. A

*A noſtre tres puiſſant et tres gracious ſr. le Roy et aſon tres honorable Councel en Parliament* complains, that whereas divers Lands in the Counties of *Gloceſter*, and *Somerſet*, &c. which were the Lands of *Tho de la River ſonne* and heir of *Richard de la River* (who held of E. 3. *in Capite* lately within age, and in ward to the King, and dying within age were delivered by commandement of E. 3. unto him the ſaid *Richard Pryor* and *Jane* his wife Cousen and Heir to the ſaid *Thomas* for that *Agnes* the Siſter of the ſaid *Thomas* was a Nunne profeſſed in the Abbey of *Cheſton* as by the Records, &c. appeareth.

That preſently after the ſaid *Liverie* made, he and his wife were diſſeiſed by *Richard Cleydon*: and the ſaid *Agnes* his Concubine, who was a Nunne profeſſed, & by *Tho. Brook*, &c. and their maintainors and for which they have been in ſuite theſe 15 years and are like to be utterly diſinherited, &c

The anſwer is thus endorſed let this Petition be delivered in Chancery, and let the Chancellor by authority of Parliament cauſe the parties to come before him in the Chancery, and there the matter compriſed in this petition be diligently viewed and examined,

the

the reaſons of the one part & the other heard; let that be done by authority of Parliament which right, and reaſon (*et bone foy bone conſcience*) requires in the caſe. I may doubt whether theſe words, by authority of Parliament, were added to countenance this anſwer or no, for if they had omitted them, yet the Lord Chancellor was directed by the Parliament to proceede, and his proceedings warranted thereby, I find divers other Petitions ſo anſwered this Parliament but not all.

Divers other Petitions were referred to be determined in the Chancery that year, but they were ſuch as could not be determined by the Common Law without theſe words *per authoritatem parliamenti prout*, &c.

The petition of Sir *John Panely* Knight to be diſcharged of 30. ſhillings rent upon an hundred acres of aſſerted Lands part of his Mannor of *Pay* in *Com: Northton*, which was ſometimes within the Whittlewood, but ſince diſforreſted by perambulation.

The anſwer is let this petition be delivered in the Chancery, and the Juſtices and the Kings Serjeants being called, and the matter well examined, let that be done which right and reaſon demands.

But

But in the following times moſt Petitions have the ſame words by authority of Parliament.

And it ſeems to be that they were added for that the parties were thereby directed to the Chancellor.

Whereas they might otherwiſe have remedy at the Common Law, and ſued in Parliament only for that they were interrupted in their ordinary proceedings by Menaces, or maintenance or the like, whereby their ſuits in Law were become long and intricate and the Chancellor happily made dainty then to meddle in ſuch caſes, and peradventure, the defendant excepted againſt it, as may appear by this that the Commons exhibited their Petition againſt theſe kind of anſwers *An.* 8. *H.* 5. *no.* 12. in theſe words.

*Item* praying the Commons in this preſent Parliament, that if any man ſue a Bill or petition endorſed by theſe words, by authority of Parliament, let this Bill or *Petition* be committed to the Councel of the King, or the Chancellor of *England* to execute and determine the contents thereof.

Whereas the ſaid Bill or *Petition* is not by the Commons of the Land required to be

be affirmed or aſſented unto.

That no men to ſuch a Bill or Petition (unleſs the aſſent, or requeſt of the Commons be endorſed) be bound to anſwer contrary to the Laws of *England.*

Unto which was anſwered (*viz*) *ſoit aviſe le Roy.*

And ſo the ſame anſwers continued in the times of King *H.* 6. and E. 4. notwithſtanding this Petition of the Commons.

*FINIS.*